United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,898

NATIONAL CARLOADING CORPORATION,

Appellant,

v.

26

UNITED STATES OF AMERICA

Appellee.

On Appeal from an Order of the United States District Court for the District of Columbia

---

United States Court of Appeals
For the
District of Columbia Circuit

FILED SEP 23 1953

Joseph W. Stewart
CLERK

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JOINT APPENDIX

1

Complaint

Filed January 6, 1950

The plaintiff for its complaint in the above entitled action respectfully shows to the Court and alleges:

1. The plaintiff, the National Carloading Corporation, is a corporation duly organized and incorporated under the laws of the State of Delaware and is authorized to do business as a freight forwarder in the various states of the United States including the District of Columbia, with the power to sue and be sued.

2. This action is brought against the United States of America under Paragraph 20 of Section 24 of the Judicial Code of March 3, 1911, 36 Stat. 1093, as amended, 28 U. S. Code Section 1346. The plaintiff's claim does not exceed ten thousand dollars ($10,000.00) and it is found upon a contract with the defendant as hereinafter more fully appears. The defendant has agreed to waive the venue provisions of 28 U. S. Code Section 1402.

3. Defendant is indebted to plaintiff in the sum of five thousand four hundred forty-seven dollars and seventy-two cents ($5,447.72) being the unpaid balance of the sum of fifteen thousand four hundred thirty-seven dollars and ninety cents ($15,437.90), rightly due in full from

2

defendant to plaintiff for services performed by plaintiff for defendant in respect to the transportation of various shipments of commodities between various points in the United States, and such shipments having moved upon bills of lading duly authorized and issued. The plaintiff presented its bills to defendant in the sum of fifteen thousand four hundred thirty-seven dollars and ninety cents ($15,437.90) for freight charges due on the shipments. The defendant paid the plaintiff nine thousand nine hundred ninety dollars and eighteen cents ($9,990.18) in respect to these bills thus leaving due the plaintiff from the defendant five thousand four hundred forty-seven dollars and seventy-two cents ($5,447.72) as aforesaid.

The appendix attached to this complaint and made a part hereof is a statement which shows the number, date and amount of plaintiff's respective bills and the date and amount paid thereon and the balance due by defendant.

4. The defendant has never questioned the correctness of the charges in the amount of fifteen thousand four hundred thirty-seven dollars and ninety cents ($15,437.90) for the services for which the charge was made. The defendant issued its checks in the amount of nine thousand nine hundred ninety dollars and eighteen cents ($9,990.18) in payment of the aforementioned bills in the amount of fifteen thousand four hundred thirty-seven dollars and ninety cents ($15,437.90).

5. Said sum of nine thousand nine hundred ninety dollars and eighteen cents ($9,990.18) was accepted by plaintiff under protest and as part payment only of the charges in the amount of fifteen thousand four hundred thirty-seven dollars and ninety cents ($15,437.90). An appropriate demand for the amount claimed to be due has been made upon the defendant and no part of it has been paid.

3 WHEREFORE, plaintiff prays for a judgment against the United States of America upon the facts and law for the sum of five thousand four hundred forty-seven dollars and seventy-two cents ($5,447.72) and for all other proper relief.

ROBERT E. WEBB,
ROBERT E. QUIRK,
Attorneys for Plaintiff,
1116 Continental Bldg.,
Washington, D. C.

APPENDIX TO COMPLAINT

No. of Bill	Date of Bill	Amount of Bill	Amount Paid	Date Paid	Balance Due
284	1/11/46	$ 394.73	$ 152.61	4/6/46	$ 242.12
3086	3/30/45	399.76	275.32	4/28/45	124.44
2716	3/16/45	1,922.01	1,564.17	4/28/45	357.84
15677	10/6/44	459.55	235.58	11/21/44	223.97
10147	6/19/44	1,434.62	246.89	7/18/44	1,187.73
10624	6/27/44	63.34	58.42	8/2/44	4.92
9160	9/5/45	57.88	13.95	10/3/45	43.93
2251	3/5/45	734.75	372.30	3/29/45	362.45
3388	4/6/45	35.69	7.97	4/28/45	27.72
2115	3/6/45	240.72	15.48	3/29/45	225.24
2050	3/5/45	1,410.73	843.06	3/29/45	567.67
14803	10/31/44	11.04	4.65	11/9/44	6.39
10855	12/7/45	51.77	24.99	1/12/46	26.78
1873	2/20/45	804.34	56.31	3/29/45	748.03
5861	6/13/45	30.50	7.94	6/4/46	22.56
1441	2/8/45	208.54	55.53	3/8/45	153.01
1442	2/8/45	71.76	40.03	3/8/45	31.73
5141	5/24/45	48.50	45.46	6/14/45	3.04
5831	4/10/44	44.37	39.73	6/9/44	4.64
16590	11/9/43	533.66	506.28	1/18/44	27.38
3909	6/17/46	1,905.06	1,569.26	11/14/46	335.80
3469	4/9/45	25.42	13.37	4/6/45	12.05
3305	4/5/45	367.39	341.97	4/23/45	25.42
2280	3/5/45	399.24	298.22	3/26/45	101.02
5122	5/24/45	695.89	517.61	2/7/47	178.28
3548	4/13/45	62.41	33.01	5/2/45	29.40
436	1/11/45	241.17	160.42	1/31/45	80.75
8624	5/23/44	49.20	.16	6/9/44	49.04
8409	9/25/45	126.85	94.66	10/27/45	32.19
7710	8/20/45	2,037.19	1,857.29	9/19/45	179.90
13351	8/10/44	361.04	351.24	8/26/44	9.80
14374	8/30/44	208.78	186.30	9/16/44	22.48
		$15,437.90	$9,990.18		$5,447.72

6 STATE OF NEW YORK,

Borough of Manhattan, ss:

George H. Cain, being duly sworn, deposes and says: that he is Secretary and Genl. Counsel of the National Carloading Corporation, the plaintiff above named; that he has read the foregoing complaint and knows the contents of the same; that the same is true to the best of his knowledge and belief.

GEORGE H. CAIN.

7 AMENDED ANSWER

(Filed January 2, 1952)

Comes now the defendant by Charles M. Irelan, United States Attorney, and answers the complaint in the above-entitled action and each allegation therein as follows:

1. Admits the allegations in paragraph 1 of the complaint.

2. Admits the allegations in the first two sentences of paragraph 2 of the complaint. With respect to the third sentence thereof defendant waives any defects of venue.

3. Denies the allegations of indebtedness, denies that the sum of $5,447.72, or any part thereof, is unpaid, but otherwise admits the allegations in paragraph 3 of the complaint.

4, 5. Alleges that defendant is without knowledge or information sufficient to form as belief as to the truth of the allegations in the first sentence of paragraph 4 of the complaint but otherwise admits the allegations in paragraphs 4 and 5 of the complaint. Defendant alleges that in addition to the cash payment of $9,990.18 plaintiff also received payment of $5,447.72 in the form of a credit which was allowed and was fully satisfied by application of previous overpayments made by defendant to plaintiff on an earlier series of shipments on which plaintiff had tendered bills to defendant in which the freight charges were calculated without making any part of the deductions then required by law to be made from commercial tariff rates for the transportation

of items of military or naval property of the United
8 States moving for military or naval use and not for civil use over so-called land-grant railroads. Such bills were paid in full as presented in accordance with Section 322 of the Transportation Act of September 18, 1940, 54 Stat. 955, 49 U. S. C. 66, but the right was reserved to the United States Government to recover the amount of any overpayment that might be subsequently discovered upon audit by the General Accounting Office, by deducting such amount from any amount subsequently found to be due and payable to plaintiff. Under that statutory procedure the General Accounting Office found that the amount of $5,447.72 had been overpaid to plaintiff on the said earlier series of shipments, and that amount was applied to the payment of plaintiff's bills shown in the appendix to the complaint, instead of being collected back from plaintiff. This method of effecting settlements is well-known to plaintiff and to carriers generally, and at the time of the transaction plaintiff was fully informed of all the details.

6. Plaintiff has been paid in full for the bills listed in the appendix to the complaint by payment of $9,990.18 in cash, plus the application of previous overpayments of $5,447.72, making a total payment to plaintiff on account of the said shipments of $15,437.90.

7. Defendant denies each allegation in the complaint not previously admitted, qualified, or denied.

WHEREFORE defendant prays that the complaint be dismissed and that no costs be taxed against the defendant.

CHARLES M. IRELAN,
United States Attorney.
RAYMOND E. BAKER,
Assistant United States Attorney.

ARMISTEAD B. ROOD,
Attorney, Department of Justice.

9-10 *Certificate of Service*

I hereby certify that service of the foregoing Amended Answer has been made upon plaintiff by mailing a copy thereof to its attorneys, Robert E. Webb and Robert E.

Quirk, 1116 Continental Building, Washington, D. C., this 2nd day of January, 1952.

(S.) Raymond E. Baker,
Assistant United States Attorney.

11 Reply to Answer as Amended

(Filed February 18, 1952)

Now comes the plaintiff and for reply to the Answer, as amended, herein filed and denies each and every allegation therein contained which is not an expressed admission of the allegations set forth in the Complaint herein filed.

Further replying, this plaintiff denies that it received payment of $5,447.72 in the form of a credit by application of alleged overpayments on bills tendered by the plaintiff to the defendant on previous shipments in which the freight charges were calculated without making deductions from the commercial tariff rates applicable to the transportation of military or naval property over so-called land grant railroads.

The plaintiff is a freight forwarder engaged in the business of consolidating domestic and foreign merchandise received by it in small units and forwarded in larger units by railroads and motor carriers. Plaintiff does not own, control, lease, manage or operate any railroad used by it in the transportation of its consolidated shipments. The plaintiff is regulated as a common carrier under the provisions of the Interstate Commerce Act as amended. It is required to issue a bill of lading to its patrons upon the receipt of shipments from such patrons. In its relation to the defendant with respect to the shipments involved,
12 plaintiff was a common carrier and issued bills of lading or receipts to the defendant as required by 49 U.S.C.A. Section 1013. Thereafter the plaintiff delivered the shipments to railroads who performed a physical transportation service and received bills of lading from the railroads. The plaintiff was a carrier in dealing with the defendant and a shipper in dealing with the railroads.

During the early development of the railroads in the United States, Congress granted tracts of land to the rail-

roads to aid their development. In consideration of the land grants, the railroads agreed to confer the free use by the U. S. Government of the granted roadbed of such railroads as a highway for the transportation by the Government in its own vehicle or in vehicles procured and employed at its expense. The plaintiff was not a party to or successor to any such contracts, and it has not now nor ever has had any interest in the land granted to the railroads.

By appropriate legislation enacted by Congress from time to time, the special land grant rates to which the Government was entitled were limited and generally were on the basis of 50 per cent of the published commercial rate of the railroads. By Section 321 of the Transportation Act of 1940, the land grant rates were limited for application to military and naval property of the United States which moved for military and naval and not for civil use and to members of the military and naval forces. As a result of an Act of Congress in 1945, effective October 1, 1946, all land grant rates were abolished. 49 U.S.C.A. 65.

In 1942 the defendant delivered certain less-carload shipments of freight to the plaintiff for transportation to various destinations. The initial movement of the shipments
by the plaintiff was by motor carriers employed by
13 it, which shipments were then delivered to the various
railroads. Such shipments, together with other less-carload shipments were delivered to and handled by the railroads in carload lots. The shipments were transported in carload lots to various points near the ultimate destinations of the shipments, at which points plaintiff received them from the railroads and thereafter delivered the shipments by motor carriers to the defendant at the points and destinations indicated on the billing of the plaintiff. The railroads issued their own bills of lading to plaintiff, in which the plaintiff was named as both consignor and consignee and plaintiff paid the railroads their charges at the regular published rates of such railroads, and which rates were applicable to any shipper for like transportation. Some of the carloads moved via railroad routes, which included land grant railroads. The plaintiff tendered its bills

to defendant for its published and applicable rates and charges for its services, which were paid in full by the defendant.

During the years 1944, 1945 and 1946 the defendant took the position that the shipments in 1942 that moved over land grant rail routes were subject to the land grant rates and since the freight charges on the shipments in question were calculated by the plaintiff against the Government without making any deduction for the portion of the haul over land grant routes, the plaintiff was overpaid in the aggregate amount of $5,447.72. Thereafter the Government sought to collect the alleged overcharges by applying that amount as a credit to the plaintiff's bills shown in the appendix attached hereto and made a part hereof. The plaintiff denied that the shipments involved or its charges were subject to the railroad land grant rates claimed to be applicable by the Government, and it further denies that the balance due it on its bills shown in the appendix to the Complaint
14 and this reply were paid by the Government by the simple process of applying the alleged overpayments of $5,447.72 to the bills already described.

WHEREFORE, Plaintiff prays as in its complaint.

ROBERT E. WEBB,
ROBERT E. QUIRK,
Attorneys for Plaintiff,
1116 Investment Building,
Washington 5, D. C.

Dated: February 18, 1952.

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing reply to answer, as amended, has been made upon defendant by mailing a copy thereof by first class mail, postage prepaid, to its attorneys of record, Charles M. Ireland, Raymond E. Baker, and Armistead B. Rood, this 18th day of February, 1952.

ROBERT E. WEBB.

APPENDIX TO REPLY TO ANSWER AS AMENDED

(Filed February 18, 1952)

Deducted From C/B# —	Date	Am't. of C/B From Which Deduction Was Made	Am't. Pd. on C/B From Which Deduction Was Made	No. of C/B Deduction Applies To	Date of C/B Deduction Applies To	Date of Actual Deduction	Am't. of Deduction
284	1/11/46*	$ 394.73	$ 102.65	1805	5/13/42	6/4/46	$228.28
3086	3/30/45	399.76	275.32	471	2/26/42	4/28/45	40.58
				405	2/18/42	"	34.69
				293	2/5/42	"	31.77
				291	2/5/42	"	17.40
							$124.44
2716	3/16/45	1,922.01	1,564.17	79	1/12/42	4/28/45	$ 11.51
				1872	5/17/42	"	103.80
				288	2/5/42	"	112.79
				658	3/18/42	"	129.74
							$357.84
15677	10/6/44	459.55	235.58	1451	7/23/42	11/31/44	$ 33.24
				1175B	7/13/42	"	41.69
				1148	7/10/42	"	61.04
				1998A	8/17/42	"	88.00
							$223.97
10147	6/19/44	1,434.62	246.89	1863	5/15/42	7/18/44	$500.74
				287	2/4/42	"	482.38
				82	1/13/42	"	50.00
				83	1/13/42	"	154.61
							$1,187.73
10624	6/27/44	63.34	58.42	2651	6/25/42	8/2/44	$ 4.92
9160	9/5/45	57.88	13.95	531	3/17/42	10/3/45	$ 43.93
2251	3/5/45	734.75	372.30	296	2/15/42	3/29/45	$128.91
				1097	4/10/42	"	172.48
				407	2/18/42	"	12.35
				84	1/13/42	"	48.71
							$ 362.45

APPENDIX TO REPLY TO ANSWER AS AMENDED—Continued

(Filed February 18, 1952)

Deducted From C/B# —	Date	Am't. of C/B From Which Deduction Was Made	Am't. Pd. on C/B From Which Deduction Was Made	No. of C/B Deduction Applies To	Date of C/B Deduction Applies To	Date of Actual Deduction	Am't. of Deduction
284	1/11/46*	$394.73	$102.65	3762	10/12/42	6/4/46	$ 13.84
3388	4/6/45	35.69	7.97	3416	7/23/42	4/28/45	$ 25.21
				4742	9/2/42	"	2.51
							$ 27.72
2115	3/6/45	240.72	15.48	404	2/18/42	3/29/45	$225.24
2050	3/5/45	1,410.73	843.06	1110	4/9/42	3/29/45	$412.85
				804	3/30/42	"	78.38
				84A	4/14/42	"	5.89
				1481	4/29/42	"	13.92
				292	2/5/42	"	56.63
							$567.67
14803	10/31/44	11.04	4.65	3134	7/11/42	11/9/44	$ 6.39
10855	12/7/45	51.77	24.99	336	2/19/42	1/12/46	$ 26.78
1873	2/20/45	804.34	56.31	774	3/24/42	3/29/45	$669.20
				365	2/16/42	"	45.77
				583	3/12/42	"	15.33
				1563A	4/30/42	"	11.95
				775B	5/5/42	"	5.78
							$748.03
5861	6/13/45	30.50	7.94	289	5/2/42	6/4/46	$ 22.56
1441	2/8/45	208.54	55.53	1880	5/18/42	3/8/45	$ 63.81
				1827	5/14/42	"	54.17
				1359	4/21/42	"	35.03
							$153.01
1442	2/8/45	71.76	40.03	2613	6/25/42	3/8/45	$ 28.61
				2401	6/5/42	"	3.12
							$ 31.73

APPENDIX TO REPLY TO ANSWER AS AMENDED—Continued

(Filed February 18, 1952)

Deducted From C/B# —	Date	Am't. of C/B From Which Deduction Was Made	Am't. Pd. on C/B From Which Deduction Was Made	No. of C/B Deduction Applies To	Date of C/B Deduction Applies To	Date of Actual Deduction	Am't. of Deduction
5141	5/24/45	$48.50	$45.46	1287	4/4/42	6/14/45	$ 3.01
5831	4/10/44	44.37	39.73	3412	7/23/42	6/9/44	$ 4.64
16590 (CG)	11/9/43	533.66	506.28	1367	4/21/42	1/18/44	$ 27.38
**3909	6/17/46	1,905.06	1,085.23	1791	1/ /43	11/14/46	$151.29
				1792	1/ /43	"	107.35
				4421	9/18/42	"	77.16
							$335.80
3469	4/9/45	25.42	13.37	2759	6/30/42	4/26/45	$ 12.05
3305	4/5/45	367.39	341.97	3586	7/27/42	4/23/45	$ 25.42
2280	3/5/45	399.24	298.22	2680	6/25/42	3/26/45	$ 41.02
5122	5/24/45	695.89	517.61	1406	4/17/42	2/7/47	$178.28
				1364	1/28/43	"	
3548	4/13/45	62.41	33.01	2269	6/4/42	5/2/45	$ 29.40
436	1/11/45	241.17	160.42	930	4/4/42	1/31/45	$ 80.75
8624	5/23/44	49.20	.16	871	3/31/42	6/9/44	$ 49.04
8409	9/25/45	126.85	94.66			10/27/45	$ 32.19
7710	8/20/45	2,037.19	1,857.29	3120	3/30/45	9/19/45	
				3121	"	"	
				3122	"	"	
				5436A	4/11/45	"	$179.90
13351	8/10/44	361.04	351.24			8/24/44	$ 9.80
14374	8/30/44	208.78	186.30			9/16/44	$ 22.48

* Deducted from C/B 824:

LG—1805	$228.28
LG—3762	13.84
NLG— 284	49.96
	292.08
	102.65
	$394.73

** NLG—$484.03

19 FINDINGS OF FACT AND CONCLUSIONS OF LAW—(Filed May 8, 1953)

Dated at Washington, D. C., this 8th day of May, 1953.

This cause having come on for trial on stipulated facts on March 30, 1953, and the parties by counsel having submitted briefs and made oral argument, and the Court having rendered its oral opinion on March 31, 1953, the Court hereby enters the following findings of fact and conclusions of law on the basis of the stipulated facts, briefs and oral arguments of counsel for the parties hereto, in accordance with said opinion.

I. *Findings of Fact*

1. The plaintiff is a Delaware corporation engaged in the freight forwarder transportation business. Plaintiff's claim in controversy is in an amount less than $10,000 and is founded upon several contracts, hereinafter described, for the transportation of property of the defendant by the plaintiff as freight forwarder.

2. In the years 1941, 1942, and 1943, the defendant, acting through the Maritime Commission and the War Department, delivered certain less than carload shipments of freight for transportation by the plaintiff in forwarder service from various Eastern and Midwestern points to various Pacific Coast and Gulf Coast destinations as described in Exhibit A to the Stipulation of Facts. The shipments consisted of property of the United States moving for a military or naval use, and not for civil use. At the time the shipments were made, land grant rates were in existence as provided by Section 321 of the Transportation Act of 1940.

20 3. The contracts involved herein are embodied in the bills of lading which the plaintiff issued to the defendant for each of the shipments mentioned in paragraph 2 hereof. Each of the bills of lading was a standard form of government bill of lading. The terms of said bills of lading are presented by Exhibits B-1, B-2, and B-3 to the Stipulation of Facts. By the terms of said bills of lading, the shipments were to be made at the lowest rates

available to the Government, unless otherwise indicated on the face thereof.

4. At the time it issued said bills of lading, plaintiff knew of the existence and nature of land grant rates, that the land grant rates are the lowest rates available to the Government and plaintiff had reason to know that the transportation of defendant's property in freight forwarder service over railroads was subject to applicable land grant rates.

5. The contracts represented by said bills of lading were intended to afford the defendant the benefit of applicable land grant rates for any use of land grant railroads or railroad routes subject to land grant rates. Under the terms of said bills of lading, plaintiff was empowered to use railroads to transport the property of the United States covered by said bills of lading and the choice of railroads to be used was wholly within the discretion of the plaintiff. In the performance of the contracts represented by said bills of lading, plaintiff used land grant railroads or railroad routes subject to land grant rates. The use of railroads by the plaintiff in the performance of the contracts represented by said bills of lading was a regular part of plaintiff's business as a freight forwarder. Plaintiff is a transportation company and operates a service directly connected with the transportation of goods by railroad.

6. Except as stated in paragraph 7 hereof, the contracts involved herein do not provide for any special services or for any rates lower than the land grant rates available to the shipments involved, and no rate other than the lowest rate available to the Government is specified on any of the bills of lading herein.

61 7. Plaintiff presented its bills for the services rendered under the contracts involved herein at the commercial rate without allowance for the applicable land grant rates. The bills were paid as presented by the Maritime Commission and the Department of the Army. The defendant, acting through the General Accounting Office, has deducted amounts specified in Exhibit A to the Stipulation of Facts representing the difference between said commercial rates and the applicable land grant rates, from other bills of the plaintiff, described in the complaint and in

the appendix to the reply to answer as amended. The parties hereto agree that the amount of $2,117.28 should not have been so deducted, since it represents payment for agreed special services by the plaintiff, under certain bills of lading specified in Column 18 of Exhibit A to the Stipulation of Facts. The parties hereto agree that the plaintiff's claim in the amount of $315.40, represented by the items marked "(R)" in Column 13 of said Exhibit A involve overpayments to the plaintiff on account of errors in the computation of the applicable rates, independent of the question of land grant rates and can be settled by adjustment of accounts in the General Accounting Office. The parties hereto agree that the amount of $60.00, as shown on page 8 of Exhibit A to the Stipulation of Facts, represents an inadvertent overstatement of plaintiff's claim.

Conclusions of Law

1. This Court has jurisdiction of this case under 28 U. S. C. 1346 (d)(2).

2. Transportation of defendant's property by plaintiff under the contracts herein was subject to land grant rates as provided by Section 321 of the Transportation Act of 1940.

3. The use of railroads for the transportation of property of the United States by the plaintiff as a freight forwarder is a use of railroads for the transportation of property of the United States within the meaning of land grant acts, providing for reduced rates to the United States.

62 4. The payment to plaintiff of $2,955.04 for services rendered under the contracts referred to in Paragraph 2 of the Findings of Fact herein was an overpayment properly deductible from the other bills of the plaintiff, described in the Appendix to the complaint and reply to answer as amended.

5. Plaintiff is entitled to recover from the defendant the sum of $2,117.28, as the agreed amount of incorrect deductions from said other bills. Payment to the plaintiff of $2,117.28 will constitute the balance of the full payment due plaintiff on said other bills.

6. The claim of the plaintiff for $315.40 represented by the items marked "(R)" in Column 13 of Exhibit A to the Stipulation of Facts should be dismissed without prejudice.

7. The claim of the plaintiff for $3,015.04 should be dismissed with prejudice.

S. JAMES R. KIRKLAND.

Submitted by:

JOSEPH KOVNER,
Attorney for Defendant.

Seen:

R. E. QUIRK,
Attorney for Plaintiff.

63 *Judgment*

(Filed May 8, 1953)

Dated at Washington, D. C., this 8th day of May, 1953.

This cause having come on for hearing on March 30, 1953, on stipulated facts, and the parties by counsel having submitted briefs and made oral argument, and the Court having rendered its opinion on March 31, 1953, and findings of fact and conclusions of law having been entered herein on May 8th, 1953, it is hereby

Ordered, Adjudged, and Decreed by the Court (1) that the plaintiff, National Carloading Corporation, shall have and recover of and from the defendant, the United States of America, the sum of $2,117.28, together with interest as provided by law; and

(2) That the claim of said plaintiff for $315.40 is dismissed without prejudice.

(3) That the claim of said plaintiff for $3,015.04 is dismissed with prejudice.

JAMES R. KIRKLAND,
United States District Judge.

5/8/53.

Submitted by:

JOSEPH KOVNER,
Attorney for Defendant.

Seen:

R. E. QUIRK,
Attorney for Plaintiff.

45 OFFICIAL TRANSCRIPT

Washington, D. C.,
March 31, 1953.

Copy for Robert E. Quirk, Esq.
Pages 1-13.
Filed with clerk (Z. A. McColly), July 29, '53.

MARGARET A. DEEDS,
Official Reporter,
United States Court House,
Washington 1, D. C.,
Telephone: ST. 3-5700, Ext. 301.

46 Washington, D. C.,
Tuesday, March 31, 1953.

The above-entitled action came on for trial on the merits before the Honorable James R. Kirkland, United States District Judge, at 10:15 o'clock a. m.

APPEARANCES:

On behalf of the Plaintiff: Robert E. Quirk, Esq.
On behalf of the Defendant: Joseph Kovner, Department of Justice; E. Craig Kennedy, General Accounting Office.

47 *Ruling of the Court*

The Court: Now, is there anything further, gentlemen, before the Court announces its opinion?

Mr. Kovner: No, Your Honor.

Mr. Quirk: No, Your Honor.

The Court: In the case entitled National Carloading Corporation v. The United States of America, being Civil Action No. 57-50, the plaintiff, a Delaware corporation, controlled to the extent of some 98½ percent by three railroads, to wit, the Chesapeake and Ohio Railroad Company, Pere Marquette, and the Erie Railroad, has brought an action against the United States of America under paragraph 20 of Section 24 of the Judicial Code of March 3, 1911, 36 Stat. 1093 as amended, 28 U. S. C. 1346.

The amount sued for does not exceed $10,000 and it is

alleged to have been founded upon a contract with the defendant as a freight forwarder. The Court, accordingly, has jurisdiction of this particular case.

The controversy grows out of a situation with which the development of our country was closely allied after the war between the States. The history of America at that point largely centered around the efforts on the part of the government and its citizens to get a railroad or communication out to the West Coast. In that period, it was necessary for the government to lend its aid and the government
48 did and, accordingly, there were land grants made to various railroads in the western portions of the United States, and a common provision of such contracts was that the railroad should be and remain a public highway for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

The history of land grant railroads and their reduced rate of tariff for the government of the United States has had a varied history. By appropriate legislation enacted by the Congress of the United States, the special land grant rates to which the government was entitled were limited and generally on the basis of 50 per cent of the published commercial rates of the railroads.

By Section 321 of the Transportation Act of 1940, the land grant rates were limited for application to military and naval property of the United States which moved for military and naval and not for civil use, and to members of the military and naval forces.

As a result of an Act of Congress in 1945, effective October 1, 1946, all land grant rates were abolished, see 49 U. S. C. 65.

The controversy with which we are engaged occurred prior to October 1, 1946, and the problem is essentially whether or not the plaintiff, a freight forwarder shipping articles of merchandise in less than carload lots and
49 enjoying a carload rate, becomes liable to the claim of the government for the reduced rates in the transportation of military goods, largely in the period during the years 1941, 1942 and 1943.

The Supreme Court of the United States has passed upon

the question of whether or not freight forwarders are public carriers and in one particular case, where the facts were quite sharp, whether they occupied any different position.

Our own Court of Appeals for the District of Columbia Circuit, in the case of Universal Carloading and Distributing Company, Inc. v. Railroad Retirement Board, decided in 1948 and reported in 172 F. 2d beginning at page 22, and with particular reference to the character of the services performed, the Court also noted the enactment on May 16, 1942 of the Freight Forwarder Act, 56 Stat. 293, 49 U. S. C. 1011, which permits a railroad to control a freight forwarder.

In reference to the position taken by the plaintiff in that case embodying the duties which it performed, our Circuit Court of Appeals held that it was in substance engaged in the railroading business, that it was subject to regulation by the Interstate Commerce Commission and, as a premise therefor, found that the employees of a freight forwarder were employees in the sense that Congress used in the Railroad Retirement Act and accordingly came under the Act.

The Court points to that for the reason that it indi-
50 cates that the rule in our Circuit is clear that a freight forwarder is a common carrier; indeed, its business is that.

The history of the organization of the freight forwarder appears to have been that for quite some time in the transportation development in America, individual companies, notably American Express and Wells Fargo, with their colorful history, themselves carried merchandise from one point in the country to another. Then apparently there grew up a very substantial business known to the public as "express business" where because of the more rapid transportation, these individual companies engaged the facilities of passenger trains to haul merchandise in specially designated cars. The business apparently proved profitable and then, as happens so many times in competition, the railroads got the idea that they could just as well handle express business as to contract with independent shippers.

Accordingly, there came to pass the railway express companies which are a part of and ancillary to the general

business of railroading. This left something of a void in the field of transportation.

The Congress of the United States had indicated it was going to limit the size of parcels moving in the parcel post branch of the Post Office Department and some enterprising persons conceived the idea of the freight forwarder. His business, in the main, is to assemble an organization
51 with proper facilities at pick-up points and to offer his services generally to the public, including the government of the United States, in a more orderly, a more definitely controlled, perhaps a more speedy service in the transportation of commodity packages. The freight forwarder derives his profit from the differential which exists between the charges he makes in shipment in less-than-carload lots of a group of shippers and the lesser charge he pays for a carload when it is finally packaged and sealed and is shipped as a unit. It is rather interesting that in his business, the freight forwarder designates himself with the carrier both as the consignor and the consignee. However, the Court has no difficulty with the proposition that he fully holds himself liable for the complete contract of carriage and he is, as the Court will point out in a moment, more in this particular case a common carrier than a shipper. That problem has arisen before the Courts where, as might be expected, controversy has arisen and in the case of Chicago, Milwaukee, St. Paul & Pacific Railroad v. Acme Fast Freight, Inc., reported at 336 U. S. beginning at page 465, the Supreme Court of the United States among other things has said:

> "The railroad has no knowledge of the contents of the car, the identity of the individual shippers, or the ultimate destinations of the consignments. The
> 52 forwarder has an unqualified right to select the carrier and route for the transportation of the freight."

I point to that because in our particular problem, the question of the right of selection of the railroad does become important.

Those preliminary matters lead us to a first finding, which

the Court now makes in order to remove the unessentials from the essentials which we must pass upon. This case has proceeded upon an agreed stipulation of fact, as well as the introduction of sample government bills of lading, government invoices, controlled through the General Accounting Office, commercial bills of lading, invoices of the plaintiff, and the general background necessary for the transportation of commodities. However, both sides have agreed that with regard to the suit originally brought which claimed originally the sum of $5,447.72, that there was a group of charges furnished by the plaintiff which upon audit, the government has conceded are in the gross sum of $2,117.28. These were special services; they do not involve the problem with which we are concerned and during the progress of the case, it was brought to the attention of the Court that two figures, namely, in the amount of $315.40 and $60 even or a total of $375.40, were a proper deduction in favor of the government as against the sum which the government agreed was due to the plaintiff. Accordingly, the
53 Court will enter judgment in the sum of $1,741.88 in favor of the plaintiff.

Now, the problem that remains with us is whether or not the outstanding balance of approximately some $3300 is due the plaintiff under its claim that as a freight forwarder it is not responsible to the government for the lower charge that results when articles belonging to the Government of the United States move over land grant railroads. In the solution of that problem, the first thing that the Court notes is the fact that the prime contract of carriage in this case was the government bill of lading which is designated as Exhibit B-1. The solution of the case apparently lies in the field of the law of contracts. When one looks at Exhibit B-1, the government bill of lading, he is struck with the fact that the Government of the United States issued its own separate and independent bill of lading. This was the essential document in the contract of carriage. As a portion of that government bill of lading, paragraph 5 of the general conditions provides as follows:

> "This shipment is made at the restricted or limited valuation specified in the tariff or classification at or

under which the lowest rate is available unless otherwise indicated on the face hereof."

On the back of this government bill of lading, immediately to the left of those instructions, in somewhat smaller type, there appears under the caption "Administrative
54 Directions," paragraph 4 which reads:

"Officers charged with the duty of providing or securing government transportation should familiarize themselves with land grant railroads in order that shipments may be made at the lowest rates available to the government by the use of such line or lines equalizing rates therewith."

Those are specific conditions which are a part and parcel of this contract and to a very large extent control the rights and obligations that flow from it in favor of the Government of the United States.

The Court does not think that the mere fact that a commercial bill or lading was then issued to the National Carloading Corporation plays any substantial part. It undoubtedly fixes the right of recovery in the case of damage for failure to deliver properly articles of merchandise between the National Carloading Corporation and the carrier itself. In that sense, it performs an important function; it also performs an important accounting function in controlling the shipment in order that proper billing could later be made for the same. For what it is worth, it would appear that in the instance when the second bill of lading is made on the commercial bill of lading, that the Carloading Corporation so far as the Government of the United States is concerned acts in the capacity of an agent
55 for the Government of the United States.

As the Supreme Court pointed out, the freight forwarder could have selected any carrier which it pleased and in this highly competitive business of railroading, especially with a customer as large as the Government of the United States, if there is anything that a traffic expert, railroad accountant or officer knows it is something about land grant railroads. That fact is significant because in

Exhibit D-2, across the face of a typical original freight bill of the National Carloading Corporation, in connection with a government shipment of merchandise, appears the legend and expression:

"This is a Government bill of lading."

If there were no difference between the two and each served merely as a contract, that would of course be unnecessary. But even in its own accounting records, the freight forwarder has made the notation for its control and undoubtedly as a signal to its bookkeeping department. This particular document has the feature of being a government bill of lading. Most railroaders will know that east of the Mississippi River there are very few land grant roads but west of the Mississippi, they are quite numerous and their routes are known and in the competition for business most every railroading company and a freight forwarder knows of them. Not only is that knowledge implied but in this particular case, the National Carloading Corporation by an opinion of March 16, 1938, from the Comptroller
56 General of the United States, in the main holding that where government freight moves over land grant railroads, the Government of the United States is entitled to the lesser charge, had actual knowledge of the fact that this was a claim of the Government of the United States to such lesser charges.

Accordingly, since there is no showing of any special consideration furnished to the government for the giving up of this preference and since, as it has been pointed out on many occasions, the feature of a land grant is very much like a convenant running with the land, it may not be waived without the consent of Congress and, accordingly, when a freight forwarder ships over the lines which are virtually golden rails of land grant, the Government of the United States is entitled to the lesser charge.

That is, in the main, the holding of this Court. That holding is buttressed by the fact that in our local circuit in the Railroad Retirement case, this particular circuit found that the employees of such freight forwarders were liable to the Act of Congress setting up the Retirement

Board; found that the freight forwarders were in railroading business. Indeed, with the restrictions now removed so that carriers themselves may organize and own and control freight forwarders, we find that 98-½ percent of the capital stock of the National Carloading Corporation is held by three carriers. It is rather noteworthy that these carriers are two basic initial carriers on the Eastern Seaboard, the Erie which taps the great area around New York City and Newark, one of the greatest ports of entry in the United States, and the Chesapeake and Ohio, which taps the Norfolk entry. Both feed traffic to a central point, generally in the neighborhood of Chicago, where the Pere Marquette Company has a great part of its trackage, and then the freight forwarder selects the particular western railroad.

57

To say that this particular freight forwarder was not aware of land grant railroads would be to make the most naive statement.

Accordingly, the Court on these findings of fact will dismiss the remaining portions of this complaint.

Are there any other findings of fact or conclusions of law that either side needs in this particular case?

Mr. Kovner: No, sir. Thank you.

The Court: Very well. Will you draft an appropriate judgment in the case?

Mr. Kovner: Will it be necessary to have findings of fact?

The Court: I think you should have summary findings of fact. If the record is appealed then you have full findings of fact. You can take them from the Court's opinion.

(Thereupon, the foregoing proceedings were concluded.)

58

Certificate of Official Court Reporter

I, Margaret A. Deeds, one of the Official Court Reporters of the United States District Court for the District of Columbia, hereby certify that the foregoing is the official transcript of the Ruling of the Court in the above-entitled proceedings.

Dated this 1st day of April, 1953.

(S) Margaret A. Deeds, Official Court Reporter.

22 STIPULATION OF FACTS

(Filed March 31, 1953)

The parties agree that the facts stated below shall be deemed true for the purposes of this proceeding, reserving however, their rights to object on the ground of immateriality or irrelevance and to introduce other pertinent evidence not in conflict with the terms of this stipulation:

1. The plaintiff is engaged in the freight forwarding business which consists, generally, of the assembling of small shipments of freight and the consolidation thereof into mixed carloads or mixed truck loads which plaintiff delivers to common carriers by railroad or motor vehicle for transporting to another point, where they are received by plaintiff from the delivering railroad or motor carrier, with ultimate delivery of the individual shipments to the various consignees thereof being made by plaintiff.

2. In the years 1941, 1942 and 1943 the defendant, acting through the Maritime Commission and the War Department, delivered certain less-than-carload shipments of freight to the plaintiff for transportation in forwarder service to various destinations as described in Exhibit A attached to and made a part of this stipulation. Plaintiff consolidated such shipments with other less-than-carload shipments in which the Government had no interest, and plaintiff thereupon delivered the consolidated shipments to particular railroads for transportation in carload lots.

23 Plaintiff issued its bills of lading or receipts to the defendant for the shipments received by it from the defendant. Exhibit B-1, attached hereto and made a part hereof, is a copy of a representative bill of lading or receipt issued by plaintiff to the defendant for one of the shipments involved in this case. Exhibit B-2 is a true copy of the back of such a bill of lading—1928 Form. Exhibit B-3 is a true copy of a back of such a bill of lading—1943 Form. The initial movement of the shipments by the plaintiff was by motor carriers employed by it, which shipments were then delivered to various railroads. The shipments were transported in carload lots to various points near the ultimate destinations of the shipments, at which points plain-

tiff received them from the railroads and thereafter delivered the shipments by motor carriers to the defendant at the points and destinations on the billing of the plaintiff. The railroads issued their own bills of lading to plaintiff for the consolidated shipments in which the plaintiff was named as both consignor and consignee and plaintiff paid the railroads their charges at the regular published rates of such railroads. Exhibit C-1, attached hereto and made a part hereof, is a copy of a representative bill of lading issued by a railroad to the plaintiff covering, among others, a shipment received from the defendant which is involved in this case. Exhibit C-2 is a true copy of the back of such a bill of lading.

3. Had the less-than-carload shipments which plaintiff received from defendant been delivered directly to a railroad on bills of lading issued by the railroad to the defendant, and had such shipments moved via a route, including a land grant railroad or railroads, the shipments would have been subject to the rates or charges that would be applicable under the appropriate land grant acts of such railroads.

24 4. The plaintiff tendered its bills, with covering vouchers, for the shipments mentioned in paragraph 2 to the Maritime Commission and the War Department without making any deduction for the portion of the haul of the shipments over land grant routes. Exhibit D-1 is a copy of a representative voucher, and Exhibit D-2 is a copy of a representative bill, covering a shipment involved in this case. The bills were paid in full by the Maritime Commission and the War Department, subject, however, to the right of the defendant upon audit and settlement of the charges by the General Accounting Office to deduct the amount of any overpayment to the plaintiff from any amount subsequently found to be due the plaintiff for other services, pursuant to 49 U. S. C. 66.

5. The defendant, through its General Accounting Office, subsequently determined that an overpayment had been made with respect to the above-mentioned bills of the plaintiff on the ground that the shipments had moved over rail routes subject to the land grant deduction, and applied the

amount, so determined to be an overpayment, as credit to bills of the plaintiff for other services. Exhibit E is a copy of a representative notice of overpayment from the General Accounting Office to the plaintiff, covering a shipment involved in this case.

6. Prior to and since May 16, 1942, when Part IV, 49 U. S. C. 1013, of the Interstate Commerce Act was enacted, plaintiff issued bills of lading or receipts to the defendant in its own name, and under such contracts it exacted, published or specified compensation for the transportation of the shipments from the point of receipt from the defendant to the point of delivery to the consignee. By virtue of the enactment of Part IV of the Interstate Commerce Act, the plaintiff, as well as other freight forwarders who perform the freight forwarder service described in Section 402 of that Act and who hold themselves out to the general public to transport property for compensation in interstate commerce, became subject to the requirement, *inter alia*, that their rates and charges must be filed with the Interstate Commerce Commission, published, and observed, except that rates and charges different from the published rates and charges may be made for the transportation of property for the Federal Government, State and other Municipal governments, etc., as provided in Section 22 of the Interstate Commerce Act.

7. The services for which the plaintiff seeks payment in this action can be classified under four headings:

A. Services performed by the plaintiff prior to May 16, 1942 covered by an agreement for special services and thus not subject to the land grant deduction. The amount involved in this class is $2,117.28, as shown by Exhibit A to this stipulation.

B. Services performed by the plaintiff prior to May 16, 1942, *not* covered by an agreement for special services. The amount involved in this class is $1,885.50, as shown by Exhibit A to this stipulation.

C. Services performed by the plaintiff on or after May 16, 1942, which are *not* covered by an agreement pursuant to Section 22 of the Interstate Commerce

Act, as amended, providing for rates other than those set forth in the published tariffs of the plaintiff, or of the railroads over which the shipments involved here moved, and not subject to land grant deduction. The amount involved in this class is $302.63, as shown by Exhibit A to this stipulation.

8. Plaintiff and defendant agree that no land grant deduction is applicable to class A, hereinbefore described.

26 9. The plaintiff contends that no such deduction should be made for class B or class C, while the defendant contends that such a land grant deduction should be made for class B and class C, hereinbefore described.

10. The plaintiff did not during the period in which the shipments hereinbefore described moved, and does not now, own, control, lease, manage or operate any railroad. At the time the shipments here involved were received by plaintiff from defendant and were transported in the manner hereinbefore described, 98½ per cent of plaintiff's issued and outstanding capital stock was owned by the Standard Carloading Corporation. The latter corporation had issued and outstanding 1350 shares of capital stock which was then owned equally (450 shares each) by the Chesapeake and Ohio Railway Company, the Pere Marquette Railroad Company, and the Southern Tier Development Company, the latter a wholly owned and controlled subsidiary of the Erie Railroad Company. No substantial portion of the shipments involved in this case moved over land grant routes owned or operated by any of the railroad companies.

11. Attached hereto and made a part hereof is Exhibit F, which is a true copy of a letter dated March 16, 1938 from the Comptroller General of the United States to the National Carloading Corporation.

12. Attached hereto and made a part hereof is Exhibit G which is a true copy of a certain agreement dated September 14, 1942, between the National Carloading Corporation and the Chief of Transportation Services, Services of Supply, War Department of the United States.

13. Attached hereto and made a part hereof is Exhibit H which is a true copy of a letter dated December 3, 1942,

from the Comptroller General of the United States to the Secretary of War, with relation to Exhibit G.

14. There is no written agreement pursuant to Section 22 of the Interstate Commerce Act, as amended, covering any services furnished by the plaintiff on or after 27 May 16, 1942 involved in this action.

15. Attached hereto and made a part hereof is Exhibit I which is a true copy of a letter dated November 17, 1943, from the Assistant Comptroller General of the United States to the Chairman of the United States Maritime Commission.

16. Attached hereto, and marked Exhibit J, is a true copy of a "History of Land Grant Provisions for Reduced Rate on Free Transportation up to Passage of Transportation Act, 1940," submitted by Mr. Joseph Eastman, as Director of Defense Transportation and member, Interstate Commerce Commission, and found at pages 9-10 in the Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 78th Congress, Second Session, on H. R. 4184, dated March 16, 17, 18, 21, 22, and 23, 1944.

ROBERT E. QUIRK,
Attorney for Plaintiff;
JOSEPH KOVNER,
Attorney for Defendant.

3/26/53.

EXHIBIT B-1

UNITED STATES OF AMERICA

Bill to U. S. MARITIME COMMISSION
(Department or Establishment and Bureau or Service)
EMERGENCY SHIP CONSTRUCTION FUND, U.S.M.C.
(Appropriation charged)
DIVISION OF PURCHASE AND SUPPLY
(Issuing office)

SEE REVERSE HEREOF

GOVERNMENT BILL OF LADING

F. E. HICKEY, Director
(Name and title of issuing officer)
OCTOBER 1, 1941
(Date issued)

ORIGINAL

Received from MANNING MAXWELL & MOORE INC
(Consignor)
by the the public property hereinafter described,
(Name of transportation company)
in apparent good order and condition (contents and value unknown), to be forwarded subject to condition stated on the reverse hereof, from PITTSBURGH PA to RICHMOND, CALIF
(Shipping point) (Destination)
by the said company and connecting lines, there to be delivered in like good order and condition to
(Consignee)
U.S.MARITIME COMMISSION. RICHMOND SHIPBUILDING CORP.
via NATIONAL C/L
(Route journey only when some substantial interest of the Government is affected thereby)

MARKS	NUMBERS ON PACKAGES	NUMBER AND KIND OF PACKAGES	DESCRIPTION OF ARTICLES (Observe strictly specific and full description. Avoid trade or fictitious names)	WEIGHT
		5 CRTS	IRON VALVES	800

RECEIVED JAN 20 1942

Pick-up service at origin was not by the Government.
(Signature of Consignor)

Size of car ordered ft. Size car furnished ft. Date furnished

TARIFF AUTHORITY
(To be filled in by general office rendering account)

AUTHORITY FOR SHIPMENT

ROUTE ORDER No. MC-

, 19 Per
(Date)

CERTIFICATE OF ISSUING OFFICER
(To be filled out when this bill of lading is issued for the account of the consignor in making shipment)

Contract No. , or Purchase Order No. MC(Fil)763 dated 3-13-41, 19

Bridgeport Conn. Allowed
(F. O. B. point named is correct)
for E. T. Miller, Administrative Assistant

(CARRIER'S RIGHTS TO SHIPPING CHARGES NOT AFFECTED BY FACTS SET OUT IN THIS CERTIFICATE)

CONSIGNEE'S CERTIFICATE OF DELIVERY.

I have this day received from National Carloading Corp.
(Name of transporting company)
at RICHMOND SHIPBUILDING CORP. the public property described in this bill of lading, in apparent
(Actual point of delivery by carrier)
good order and condition, except as noted on the reverse hereof. Delivery service at destination was not by the
Weight Eight hundred pounds.

RICHMOND SHIPBUILDING CORP.
(Consignee)
By , 19

(Other side contains Government bill of lading terms and conditions)

29

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ADMINISTRATIVE DIRECTIONS

1. Government property will be transported on the prescribed form of Government bill of lading (original, memorandum, and shipping order), which will be identified by serial numbers.

2. Through bills of lading will be issued in all instances between initial and ultimate points, except when rates more advantageous to the Government may be otherwise secured.

3. When shipments are made under contract or special rates, notation of such fact should appear on the face of bills of lading.

4. Officers charged with the duty of providing or securing Government transportation should familiarize themselves with land-grant railroads in order that shipments may be made at the lowest rates available to the Government by the use of such lines, or lines equalizing rates therewith.

5. Public property may be delivered by any Government officer or agent to the Quartermaster Corps, U. S. Army, which will ship the same under its regulations. (28 Stat. 111.)

6. Bills of lading must describe shipments of articles by their commercial names, giving separately such weights, dimensions, and manner of packing as may be necessary to ascertain classifications and rates and to enable recovery in case of loss or damage.

7. If the number of articles to be shipped be too great for the blank form (original, memorandum, and shipping order), extra sheets of the prescribed form should be used, and so attached and designated as to form but one bill of lading, under one number.

8. A voucher when submitted for settlement shall cover charges to one office or service only. The name of the office is inserted at the top of the bill of lading. Correspondence regarding transportation accounts shall be addressed to the particular office or service and reference made to the serial numbers of the Government bills of lading included in the company's bill.

REPORT OF LOSS, DAMAGE, OR SHRINKAGE

Notice is hereby given the carrier to whom this bill of lading is surrendered that the shipment was received in condition shown below and that claim is made for the value of such loss, damage, or shrinkage, as indicated.

Explanation regarding loss, damage, or shrinkage to be made by consignee, who will state all the facts available concerning the nature or extent of the loss, damage, or shrinkage, and how it occurred.

The within shipment was received with the following loss, damage, or shrinkage:

Description: .....

.....

.....

.....

.....

.....

Weight of such articles ..... pounds.

Invoice value or cost of repairs, $.....

I certify that the facts noted above are correct.

.....
Consignee.

By .....

Title .....

30

GENERAL CONDITIONS AND INSTRUCTIONS

CONDITIONS

It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation to the office indicated on the face hereof of this bill of lading, properly accomplished, attached to freight voucher prepared on the authorized Government form, payment will be made to the last carrier, unless otherwise specifically stipulated.

2. Unless otherwise specifically provided or otherwise stated hereon, this bill of lading is subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier.

3. Shipment made upon this bill of lading shall take no higher rate than would be charged had the shipment been made upon the uniform straight bill of lading or uniform express receipt.

4. No charge shall be made by any carrier for the execution and presentation of bills of lading in manner and form as provided by the instructions hereon.

5. This shipment is made at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate is available, unless otherwise indicated on the face hereof.

6. Receipt of the shipment is made subject to the "Report of Loss, Damage, or Shrinkage" noted hereon.

7. In case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to period within which notice thereof shall be given the carriers or to period within which claim therefor shall be made or suit instituted.

INSTRUCTIONS

1. Erasures, interlineations, or alterations in bills of lading must be authenticated and explained by the person making them.

2. Shipping order, original bill of lading, and memorandum bill of lading should be used in making a shipment. Only one original bill of lading will be issued for a single shipment. The shipping order should be furnished the initial carrier. The original bill of lading and memorandum copies should be signed by the agent of the receiving carrier, returned to the consignor, and the original promptly mailed to the consignee. The consignee on receipt of the shipment will sign the consignee's certificate on the original bill of lading and surrender the bill of lading to the last carrier. The bill of lading then becomes the evidence upon which settlement for the service will be made. Memorandum copies of bills of lading may be used as administrative officers direct.

3. In the absence of the consignee, or on his failure to receipt, the person receipting will certify that he is duly authorized to do so, reciting such authority.

4. In no case will a second bill of lading be issued for a shipment, nor will a bill of lading be issued after the transportation has been performed. In case the bill of lading has been lost or destroyed, the carrier shall be furnished by the consignee with a "Certificate in Lieu of Lost Bill of Lading," on the standard form prescribed therefor which, when finally consummated by acknowledgment of the "Certificate and Waiver by Transportation Company," shall accompany the bill for services submitted by the carrier to the officer charged with the settlement of the account. Should the original bill of lading be located after settlement has been made on the certificate, it will be forwarded to the administrative office of the department concerned for transmittal to the General Accounting Office.

5. To insure prompt delivery of property, in the absence of the bill of lading, the consignee should give to the carrier a "Temporary Receipt," executed on the prescribed form, for the property actually delivered. On the recovery of the bill of lading, or when the certificate provided for above shall have been given, a statement will be indorsed on said bill of lading or certificate of the fact of the delivery as per said temporary receipt, and the said temporary receipt will be indorsed with reference to the bill of lading or certificate sufficient to identify the same, and both papers attached and forwarded with the claim for payment thereon.

6. In case of loss or damage to property while in the possession of the carrier, such loss or damage shall, when practicable, be noted on the bill of lading or certificate in lieu thereof, as the case may be, before its accomplishment. All practicable steps shall be taken at that time to determine the loss or damage and the liability therefor, and to collect and transmit to the proper officer, without delay, all evidence as to the same. Should the loss or damage not be discovered until after the bill of lading or certificate has been accomplished, the proper officer shall be notified as soon as the loss or damage is discovered, and the agent of the carrier advised immediately of such loss or damage, extending privilege of examination of shipment.

7. Bills must be submitted by the general officers of carriers, and on forms furnished by the Government, to be obtained from the Public Printer, Washington, D. C.

30—1874 U.S. GOVERNMENT PRINTING OFFICE

30

EXHIBIT B-2

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ADMINISTRATIVE DIRECTIONS

1. Government property will be transported on the prescribed form of Government bill of lading (original, shipping order, Government freight waybill — original, Government freight waybill — carrier's copy and memorandum copy), which will be identified by serial numbers following letter symbols approved in advance by the General Accounting Officer.

2. Through bills of lading will be issued in all instances between initial and ultimate points, except when none more advantageous to the Government may be otherwise secured.

3. When shipments are made under contract or special rates, mention of such facts should appear on the face of bills of lading.

4. Officers charged with the duty of providing or securing Government transportation should familiarize themselves with land-grant railroads in order that shipments may be made at the lowest rates available to the Government by the use of such lines, or lines equalizing rates therewith.

5. In those departments and establishments which ship property the nature of which makes it subject to land grant rates, and where such rates may be applicable over all or part of the route, the words "Military" or "Nonmilitary" should be placed on the original bill of lading and all copies thereof in a conspicuous manner immediately preceding the first item in the column headed "Description of Articles." If the same bill of lading covers both "Military" and "Nonmilitary" items, appropriate groupings should be used, each conspicuously identified.

6. Bills of lading should designate the articles shipped by the carriers' classifications or tariff description if possible, otherwise use a clear nontechnical description and add departmental nomenclature if desired. State separately such weights, dimensions, and manner of packing as may be necessary to ascertain classifications and rates and to settle recovery in case of loss or damage.

7. If the number of articles to be shipped be too great for the blank form (original, shipping order, Government freight waybill — original, Government freight waybill — carrier's copy and memorandum copy), continuation sheets of the prescribed form should be used, and so attached and designated as to form but one bill of lading, under one number.

REPORT OF LOSS, DAMAGE, OR SHRINKAGE

Notice is hereby given the carrier to whom this bill of lading is surrendered that the shipment was received in condition shown below and that claim is made for the value of such loss, damage, or shrinkage, as indicated.

Explanation regarding loss, damage, or shrinkage to be made by consignee, who will state all the facts available concerning the nature or extent of the loss, damage, or shrinkage, and how it occurred.

The within shipment was received with the following loss, damage, or shrinkage:

Description:.....

.....

.....

.....

.....

.....

Weight of such articles.....pounds.

Invoice value or cost of repairs, $.....

I certify that the facts noted above are correct.

.....
Consignee.

By.....

Title.....

GENERAL CONDITIONS AND INSTRUCTIONS

CONDITIONS

It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation of this bill of lading, properly accomplished and attached to freight voucher prepared on the authorized Government form, to the office indicated on the face hereof, payment will be made to the last carrier, unless otherwise specifically stipulated.

2. Unless otherwise specifically provided or otherwise stated hereon, this bill of lading is subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier.

3. Shipment made upon this bill of lading shall take no higher rate than would be charged had the shipment been made upon the uniform straight bill of lading or uniform express receipt.

4. No charge shall be made by any carrier for the execution and presentation of bills of lading in manner and form as provided by the instructions hereon.

5. This shipment is made at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate is available, unless otherwise indicated on the face hereof.

6. Receipt of the shipment is made subject to the "Report of Loss, Damage, or Shrinkage" noted hereon.

7. In case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to period within which notice thereof shall be given the carriers or to period within which claim therefor shall be made or suit instituted.

8. Carrier's rights to shipping charges are not affected by facts set out in the certificate of issuing officer.

INSTRUCTIONS

(See also General Regulations No. 97, issued April 15, 1943, by the Comptroller General of the United States).

1. Erasures, interlineations, or alterations in bills of lading must be authenticated and explained by the person making them.

2. Original bill of lading, shipping order, Government freight waybill—original, Government freight waybill—carrier's copy, and memorandum bill of lading should be used in making a shipment. Only one original bill of lading will be issued for a single shipment. The shipping order, Government freight waybill—original, and Government freight waybill—carrier's copy, should be furnished the initial carrier. The original bill of lading and, if administratively requested, not more than two memorandum copies will be signed (legible carbon impression signatures will be accepted) by the agent of the receiving carrier, returned to the consignor, and the original promptly sent to the consignee. The consignee on receipt of the shipment will sign the consignee's certificate on the original bill of lading and surrender the bill of lading to the last carrier. The original bill of lading then becomes the evidence upon which settlement for the service will be made. Memorandum copies of bills of lading may be used as administrative officers direct.

3. In the absence of the consignee, or on his failure to receipt, the person receipting will certify that he is duly authorized to do so, reciting such authority.

4. In no case will a second bill of lading be issued for a shipment, nor will a bill of lading be issued after the transportation has been performed, except in the conversion of a commercial bill of lading as provided for in the above-cited General Regulations. In case the bill of lading has been lost or destroyed, the carrier shall be furnished by the consignee with a Certificate in lieu of lost bill of lading, on the standard form prescribed therefor which, when finally consummated by acknowledgement of the certificate and waiver by transportation company, shall accompany the bill for services submitted by the carrier to the officer charged with the settlement of the account. Should the original bill of lading be located after settlement has been made on the certificate, it will be forwarded to the administrative office of the department concerned for transmittal to the General Accounting Office.

5. To insure prompt delivery of property, in the absence of the bill of lading, the consignee should give to the carrier a "Temporary Receipt," executed on the prescribed form, for the property actually delivered. On the recovery of the bill of lading or when the certificate provided for above shall have been given, a statement will be indorsed on said bill of lading or certificate of the fact of the delivery as per said temporary receipt, and the said temporary receipt will be indorsed with reference to the bill of lading or certificate sufficient to identify the same, and both papers attached and forwarded with the claim for payment thereon.

6. In case of loss or damage to property while in the possession of the carrier, such loss or damage shall, when practicable, be noted on the bill of lading or certificate in lieu thereof, as the case may be, before its accomplishment. All practicable steps shall be taken at that time to determine the loss or damage and the liability therefor, and to collect and transmit to the proper officer, without delay, all evidence as to the same. Should the loss or damage not be discovered until after the bill of lading or certificate has been accomplished, the proper officer shall be notified as soon as the loss or damage is discovered, and the agent of the carrier advised immediately of such loss or damage, and extended privilege of examination of shipment.

7. Bills must be submitted by the general officers of carriers on voucher forms approved by the Comptroller General of the United States and such forms may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D. C. A voucher when submitted for settlement shall cover charges to one office or service only and there must be furnished with each bill of lading, where land-grant deductions are involved, the basis or formula of arriving at the net amount claimed unless this information has been previously furnished. Correspondence regarding transportation accounts shall be addressed to the particular office or service and reference made to the letter symbol and serial numbers of the Government bills of lading included in the company's bill.

SPECIAL NOTICE

The space on this bill of lading headed "FOR USE OF DESTINATION CARRIER ONLY" must not be covered by writing or marks. It is for the sole use of the accounting officer of the destination carrier.

32

EXHIBIT D-1

(The matter to be typed below name of Department, Bureau or Establishment, and duplicate thereof, or carbon, if required, as specified on bill of lading)

VOU. NO. 44[illegible]

Public Voucher for Transportation of Freight or Express

This voucher consists of one sheets

CARRIER'S BILL NO. 405

(Accounting Classifications)

(Statement of account must be completely filled in by the carrier prior to signature, and there must not be any erasure or alteration unless initialed or signed)

U.S. Maritime Commission
(Department, Bureau, or Establishment)

DA-42 3740[illegible] APPROPRIATION 11h AMOUNT

Defense Aid. Vessels and Watercraft Allot.to U.S. Maritime [illegible]

H-1644b / 268

G. F. ALLEN, DISBURSING OFFICER, TREASURY DEPARTMENT, WASHINGTON, D.C.

(For use of Paying Office)

OBSERVE INSTRUCTIONS ON REVERSE HEREOF

THE UNITED STATES, DR.,

To NATIONAL CARLOADING CORPORATION

ADDRESS 19 RECTOR STREET
NEW YORK, N. Y.

From 834.69 Deducted from Bill 308, Jan 20 1888 4/45 G.F. Allen

BILL OF LADING Date of B/L	Number		CLASS	WEIGHT OR MEASUREMENT	RATE Gross	RATE Net	AMOUNT Dollars	AMOUNT Cts.	NO. ACTION
		Philadelphia, Pa.							
[illegible]	MC-36905	Richmond, Calif.		128			4	40	
		Richmond, Virginia							
12/5	MC-21884	Richmond, Calif.		936			33	51	
		Cleveland, Ohio							
[illegible]	MC-83246	Richmond, Calif.		17			1	53	
		Franklin, Pennsylvania							
12/17	MC-26424	Richmond, Calif.		6[illegible]			[illegible]	36	
		Cleveland, Ohio							
12/17	MC-90566	Richmond, Calif.		265			5	57	
		Pittsburgh, Penna.							
[illegible]	MC-88712	Richmond, Calif.		640			13	86	
		Brooklyn, N.Y.							
12/28	MC-21047	Richmond, Calif.		788			23	64	
		Pittsburgh, Penna.							
1/20/42	MC-88729	Richmond, Calif.		406			8	77	
		Pittsburgh Pa.							
1/20/42	MC-25[illegible]	Richmond, Calif.		800			[illegible]	[illegible]	
		Pittsburgh, Penna.							
1/30	MC-35289	Richmond, Calif.		973			21	02	
						Total	148	96	

I CERTIFY that the above account is correct and just, that the services have been rendered as stated; that payment thereof has not been received, and that the rates charged are not in excess of the lowest net rates available for the Government, based on tariffs effective at the date of service.

Per [illegible]
Asst. Gen. Auditor
(Capacity)

* Payee National Carloading Corporation
(Name of company or corporation)

(Additional statements by Department, Bureau, or Establishment, if deemed necessary)

APPROVED: * B-107822 4-21-42

Eak

GENERAL ACCOUNTING OFFICE
PREAUDIT
Certified for payment in the sum of $ [illegible]
Comptroller General of the United States
By [illegible]

(Payee must NOT sign this space)

Differences: [illegible]

Account verified; correct for $ 148 96

Signature or initials

I CERTIFY that the above services were rendered as stated, and that they were necessary for the public service.

†Approved for $ 148 96

(Sign original only)

† [illegible]

K B BOVAY

JUN 17 1942

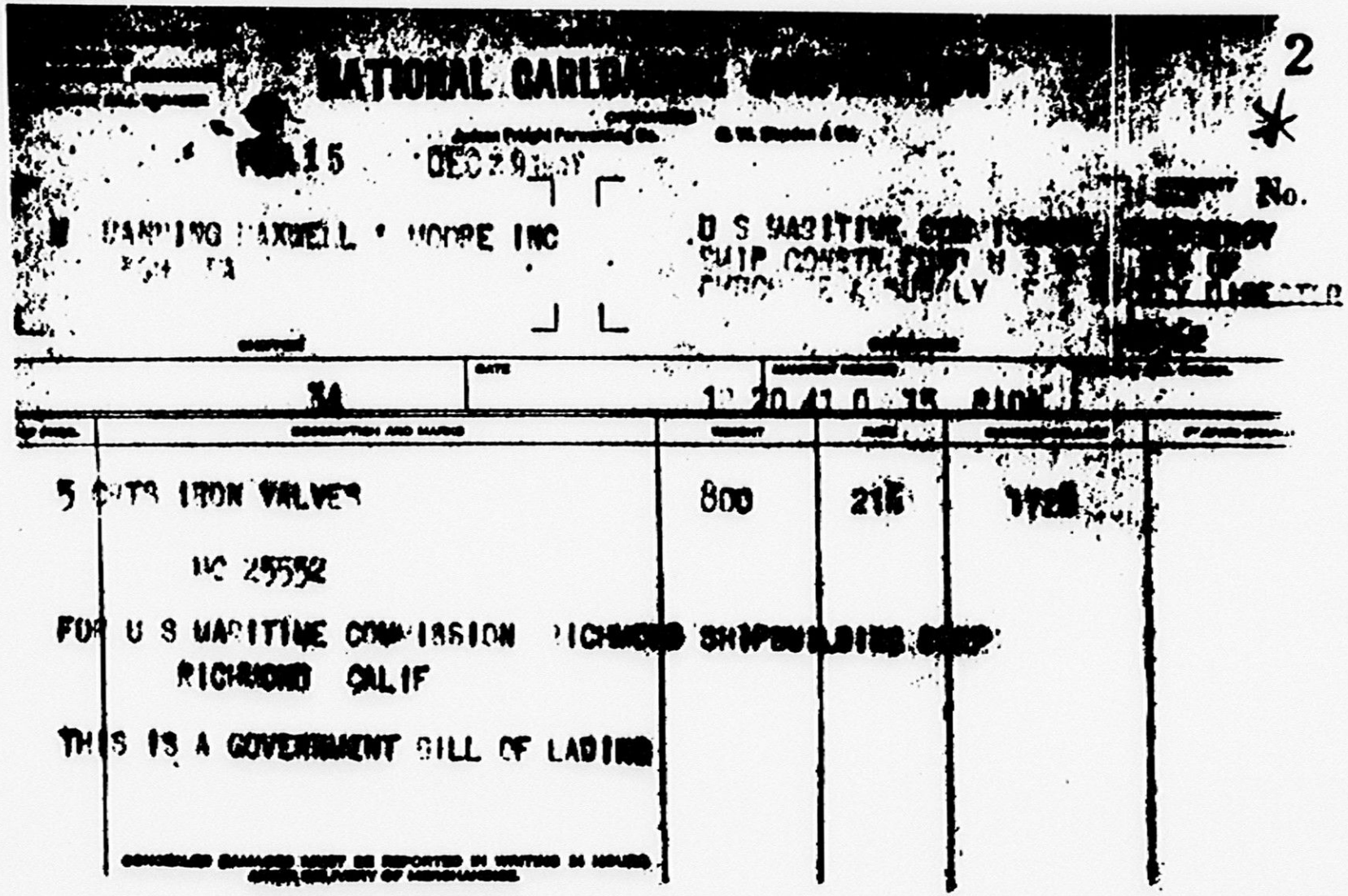
Title [illegible]

Paid by Check No. 63333, dated JUN 24 [illegible], 19[illegible], for $[illegible]

* When a voucher is signed in the name of a company or corporation, the name of the person writing the company or corporate name as well as his own official designation must appear. For example "A. B. C. Railway Co., per John Doe, Comptroller" or "Auditor," as the case may be. If the ability to certify and authority to execute are combined in the same person, one signature only is necessary, otherwise the appropriate certification must be executed by each person whose official title appears.

34

EXHIBIT D-2



NATIONAL CARLOADING

15 DEC 29

DAMPING MAXWELL & MOORE INC

U S MARITIME COMMISSION
SHIP CONSTRUCTION
PURCHASE & SUPPLY

No.

2

34

1 20 41 0 35 810

	DESCRIPTION AND MARKS	WEIGHT	RATE	CHARGES
5	CAST IRON VALVES	800	215	
	MC 25552			
	FOR U S MARITIME COMMISSION RICHMOND SHIPBUILDING CORP RICHMOND CALIF			
	THIS IS A GOVERNMENT BILL OF LADING			

CONCEALED DAMAGE MUST BE REPORTED IN WRITING 24 HOURS AFTER DELIVERY OF MERCHANDISE

33

35

BEST COPY AVAILABLE
from the original bound volume

37a EXHIBIT F

Comptroller General of the United States
Washington

March 16, 1938.

National Carloading Corporation,
19 Rector Street,
New York, New York,

GENTLEMEN:

There has been considered your request for review of settlement T-95491, October 6, 1934, which disallowed $64.81, as deduction for land grant upon your bill 215237 for $195.84 for transportation of a shipment of "L. H. Shovels" 10880 pounds from Piqua, Ohio, to Denver, Colorado, in July 1933.

There was submitted in connection with your bill a Government bill of lading No. A-158383, issued apparently at Denver, Colorado, the destination of the shipment, which bears the following notation: "This dummy bill of lading being issued in lieu of shipment on Government bill of lading by the Wood Shovel & Tool Co., Piqua, Ohio, to the U. S. Forest Service, Denver, Colorado, on July 3, of 340 bdls. L. H. Shovels (2040) 10880 [pounds ?], National Carloading Corporation 'Arrival Notice' showing freight bill No. 215237 attached to memorandum copy hereof." The usual spaces on the bill of lading for showing the consignor, initial carrier, shipping point and destination of the shipment were left blank. The consignee's certificate on the bill of lading was executed to show receipt of the shipment at Denver, Colorado, from the National Carloading Corporation July 7, 1933, said certificate being signed "U. S. Forest Service, Whse. E. Hazard" as consignee. There was also submitted with your bill a copy of National Carloading Corporation "Arrival Notice and Drayman's Memo.," indicating the Wood Shovel & Tool Company, Piqua, Ohio, as shipper, "Forest Service, Denver, Colo." as consignee, "10880" as the weight and "19584" as the charges. Your bill claimed charges in the amount of $195.84, which is the amount that would accrue on the basis of a rate of $1.80 per hundred

pounds. The commercial freight rate from Piqua, Ohio, to Denver, Colorado, applicable on these articles was $1.80 per hundred pounds being the third-class rate of $1.78 plus 2 cents emergency charge published in Agent Jones' tariff 491, I. C. C. No. 2462. The settlement allowed charges in the amount of $131.03, on the basis of the rate $1.80 per hundred pounds reduced by deduction for land grant.

You urge that this shipment moved on commercial bill of lading and that it is your understanding that land-grant rates can only be applied by the Government when same is moving in Government service on Government bills of lading; that the National Carloading Corporation "not being a common carrier is not obligated to protect
37b so-called Land-Grant deduction rates even if you manage to secure same moving on commercial bills of lading over rail carriers;" and that the facilities of the National Carloading Corporation were used in this instance to save time in transit.

The right of the Government to reduced rates for the transportation of Government property over land-grant railroads is not dependent upon the use of a Government bill of lading. In *Northern Pacific Railway Company* v. *United States,* 72 Ct. Cls. 563, there were involved, among others, certain shipments of Government property transported on commercial bills of lading in connection with which it was held that deductions for land grant aggregating $533.68 were proper. Also, in *Louisville & Nashville R. R. Company* v. *United States,* 267 U. S. 395, 397-398, it was said:

> "* * * Under the land-grant acts the United States was entitled to the reduced rates if the coal when hauled was its property. * * * But the mere use of government forms of bills of lading is not conclusive on the question of ownership of property at the time of transportation, and does not give the United States the right of transportation at land-grant rates."

Thus it is clear that the right to reduced rates for transportation of Government property over land-grant lines is not controlled by or dependent upon the use of a Govern-

ment bill of lading.

Concerning the proposition that the National Carloading Corporation, not being a common carrier, is not obligated to protect net land-grant rates, it is to be observed that the mere fact that the transporting agency operating over a land-grant line is not the carrier to which the lands were granted, or a successor in interest to such carrier, does not remove the obligation to accept for service over the land-grant line the reduced charges otherwise applicable. Thus in *Astoria and Columbia River Railroad Company* v. *United States,* 41 Ct. Cls. 284, it was said:

> "The restrictions and conditions of the Act * * * concerning freight rates to be charged the Government by land-grant roads extend not only to the original land-aided company, but to any other company carrying Government freight over such a roadway."

and that

> "The right to the use of the railroad by the Government as a post route and military road is a right annexed to and forms a part of the grant, in the nature of a covenant running with the land—the roadway—and that right can not be waived or separated from the railroad without the consent of Congress by appropriate legislation."

37c See, also, *Chicago, St. Paul, Minneapolis & Omaha Rwy. Co.* v. *United States,* 217 U. S. 180.

As to the suggestion that the facilities of the National Carloading Corporation were used in the instant matter in order to save time in transit it is proper to state that there is nothing in this record to show any request by the Government upon the National Carloading Corporation for special service. It appears that the articles concerned were purchased under an agreement calling for delivery f.o.b. Piqua, Ohio. While the record indicates that request was made upon the vendor to make shipment upon commercial bill of lading, freight collect, with contemplation of substituting therefor a Government bill of lading at destination, this procedure being employed with a view to saving the time

that would have been required to transmit a Government bill of lading to point of origin before shipment, there is nothing to show that such instructions contemplated or authorized the employment of any transportation facility other than those ordinarily and customarily employed. The charges allowed in the settlement here concerned were those which would have been applicable for such service.

Accordingly, the payment of commercial charges without deduction for land grant does not appear to be authorized.

Respectfully,

(Signed) R. N. ELLIOTT,
Acting Comptroller General
of the United States.

NOTICE OF APPEAL

Filed July 3, 1953

Notice is hereby given that Plaintiff appeals to the United States Court of Appeals for the District of Columbia Circuit from the judgment of this Court entered May 8, 1953, insofar as said judgment dismissed with prejudice Plaintiff's claim for $3,330.44.

ROBERT E. QUIRK,
Attorney for Plaintiff,
Investment Building,
Washington, D. C.

BRIEF FOR APPELLANT

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the
District of Columbia Circuit
SEP 22 1953
Joseph W. Stewart
CLERK

No. 11,898

NATIONAL CARLOADING CORPORATION,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from an Order of the United States District Court for the District of Columbia

ROBERT E. QUIRK,
Investment Building,
Washington, D. C.;
Attorney for Appellant.

Questions Presented

During World War II, the United States shipped various items of less-than-carload freight from eastern origins to western destinations via Appellant, a domestic freight forwarder. Appellant accepted the freight, issuing in each instance a bill of lading on the standard Government form. The Government's property was then consolidated with non-Government property into mixed carload lots and shipped at carload rates by railroad on commercial bills of lading issued by the rail carriers, naming Appellant as shipper and consignee. Appellant furnished pickup and delivery service by truck at origin and destination. Some of the distance that each shipment traversed by rail was over lines which would have been required to make land-grant deduction from commercial rates if the Government had shipped by railroad instead of using forwarder service. Appellant billed the Government at its standard less-than-carload rates for forwarding service, and received no land-grant concession from the carload tariff rates of the rail carriers. Nevertheless, the District Court held that the forwarder was bound to allow the Government land-grant deductions for mileage over land-grant railroad routes.

The questions are:

(1) Whether the standard form of Government bill of lading requires the forwarder to allow land-grant deductions to the Government as a matter of contract; and

(2) Whether the same result is required by the statutory law.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,898

NATIONAL CARLOADING CORPORATION,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from an Order of the United States District Court for the District of Columbia

---

BRIEF FOR APPELLANT

Jurisdictional Statement

This is an appeal from that part of a judgment of the United States District Court for the District of Columbia which dismissed with prejudice the claim of Appellant (plaintiff below) for $3,015.04 for transportation of Gov-

ernment property (JA 15).[1] The District Court had jurisdiction under the Act of June 25, 1948, c. 646, 62 Stat. 933, as amended, 28 U.S.C. 1346. This Court has jurisdiction of the appeal under the Act of June 25, 1948, c. 646, 62 Stat. 929, as amended, 28 U.S.C. 1291.

Statement of the Case

a. *The Pleadings*

Appellant is a freight forwarder, the nature of whose business is hereinafter described (JA 1, 24-25). The complaint alleges that between 1944 and 1946, Appellant performed services for the Government (Appellee) in respect to the transportation of various shipments of property between points in the United States (JA 1, 4); that Appellant billed the Government for those services in the sum of $15,437.90; that the Government paid in respect to such bills $9,990.18, leaving due from defendant $5,447.72. (Various adjustments were effected during the proceedings in the District Court, and the amount in controversy here is $3,015.04.)

The Government answered (JA 4-5), pleading payment—an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure. The answer alleged that payment had been effected by allowance of a credit against the freight bills upon which Appellant sued, through "application of previous overpayments made by defendant to plaintiff on an earlier series of shipments on which plaintiff had tendered bills to defendant in which the freight charges were calculated without making any part of the deductions then required by law to be made from commercial tariff rates for the transportation of items of military

---

[1] Through inadvertence, the notice of appeal refers to the sum of $3,330.44, rather than $3,015.04 (JA 38). The amount in controversy is $3,015.04, and Appellant waives any claim in excess of that sum.

or naval property of the United States moving for military or naval use and not for civil use over so-called land-grant railroads."[2]

Appellant replied, (JA 6-8) denying receipt of the payment in the form of a credit of overpayments on the previous bills, and reciting the facts relative to the earlier transactions.

The controversy thus pertains not to the transportation charges under the bills upon which the action was instituted, but to the charges under previous bills from which the Government made deductions as specified in Appendix A to the Stipulation of Facts (R 28).[3]

b. *The Facts as Stipulated*

The facts relating to the earlier shipments were stipulated. The stipulation and selected exhibits thereto annexed appear in the Joint Appendix at pp. 24-38. It appears from the stipulation that:

(1) Appellant's forwarding business consists of the assembling of small shipments of freight and the consolidation of such shipments into mixed carloads or mixed truckloads. Appellant delivers such mixed carloads or truckloads to common carriers by railroad or motor vehicle for transportation to another point, where Appellant receives them from the delivering rail or motor carrier. Appellant thereupon makes ultimate delivery of the individual shipments to their respective consignees (JA 24).

(2) The Maritime Commission and the War Department during 1941-1943 delivered to Appellant various less-than-

---

[2] Under the Act of Sept. 18, 1940, c. 722, 54 Stat. 955, 49 U.S.C. 66, the Government pays transportation bills of the type here involved upon presentation and prior to audit, "but the right is reserved to the United States Government to deduct the amount of any overpayment to any such carrier from any amount subsequently found to be due such carrier."

[3] "JA" denotes the Joint Appendix. "R" denotes the unprinted portions of the record.

carload shipments of freight for transportation in forwarder service from points of origin east of Chicago to various destinations west of Chicago, most of them on the Pacific Coast (Ex. A, R 28). These shipments were consolidated by Appellant with other less-than-carload shipments in which the Government had no interest (JA 24).

(3) Appellant initially picked up the Government's shipments by motor carriers, consolidated them, and after consolidation, delivered them in carload lots to various railroads which the record does not identify. The railroads transported the mixed carloads of Government and non-Government property to points near the ultimate destinations of the shipments, at which points Appellant received them from the railroads and made final delivery to destination by motor carriers (JA 24-25).

(4) On receipt of each shipment at points of origin, Appellant issued its bill of lading on the standard Government bill of lading form (JA 24). The railroads issued their own standard commercial bills of lading to Appellant for the carloads of consolidated shipments tendered by Appellant. The railroad bills of lading named Appellant in each instance as consignor and consignee. (Representative documents are set forth in the Joint Appendix at pp. 29-34. Exhibit B-1 is the face of a Government bill of lading for one shipment. Exhibit B-2 is a copy of the back of that bill—1928 form. Exhibit B-3 is a copy of the back of that bill—1943 form. Exhibits C-1 and C-2 are copies, respectively, of the front and back of a commercial bill of lading issued by the railroads.)

(5) Appellant paid the railroads their charges at the regular published rates, without deduction for land-grant (JA 25).

(6) The property comprising the several shipments was nowhere described as military or naval property (the only

kind subject to land-grant rates during the period in question), but the parties have agreed that had the Government delivered its property directly to a railroad for shipment by a route which included land-grant railroad mileage, its shipments "would have been subject to the rates or charges that would be applicable under the appropriate land-grant acts of such railroads" (JA 25). The record nowhere identifies the land-grant railroads involved or the acts which granted their lands or defined their land-grant obligations.

(7) Appellant's transportation bills covering the forwarding of the shipments moving during 1941-1943 were paid by the Government, but later the General Accounting Office held that they had been overpaid because no land-grant deductions had been taken for that portion of the respective movements which traversed rail routes subject to land-grant deduction. The deductions made by the General Accounting Office were applied as credits toward payment of the bills here in suit (JA 25-26).

(8) On May 16, 1942, Part IV of the Interstate Commerce Act (c. 318), 56 Stat. 284, 49 U.S.C. 1001 et seq., was enacted, requiring Appellant and other forwarders to publish and file their rates with the Interstate Commerce Commission and to observe their rates as filed (49 U.S.C. 1005). The statute permits a forwarder to enter into voluntary agreements with Federal, State, and Municipal Governments for the transportation of the property of such Governments at rates that are different from published tariff rates (JA 26-27).

(9) Appellant does not own, control, lease or manage any railroad. Its stock was owned indirectly by three eastern railroads, but no substantial portion of the shipments here involved moved over their routes (JA 27). Those railroads were the Pere Marquette, the Chesapeake and Ohio, and the Erie. All of them operate east of Chicago. As is

generally known and as Exhibit J to the Stipulation shows (R 41-44), railroad land-grants were in most instances made to railroads west of Chicago to aid in the development of the western portion of the United States. We understand that the Government does not claim that any land-grant deductions here in issue relate to traffic moving over any eastern railroad.

c. *Findings and Opinion of the District Court*

In its Findings of Fact (JA 12-14) the District Court held that the Government bills of lading constituted the contracts here involved; and that such contracts "were intended to afford the defendant the benefit of applicable land-grant rates * * *." It also found, erroneously, that the terms of such bills of lading required shipments thereunder to be made "at the lowest rates available to the Government" (JA 13).

As conclusions of law, the Court held (JA 14) that the transportation here involved was subject to land-grant deduction as provided by section 321 of the Transportation Act of 1940 (Act of Sept. 18, 1940, c. 722, 54 Stat. 954, 49 U.S.C., note following § 65); and that "The use of railroads for transportation of property of the United States by the plaintiff as a freight forwarder is a use of railroads for the transportation of property of the United States within the meaning of the land-grant acts"—which acts the Court did not identify.

In its opinion, the District Court held that the solution of the case "apparently lies in the field of the law of contracts"; that the Government bill of lading was the "essential document" in the case (JA 20); that the provisions of the Government bill of lading put Appellant on notice that the shipment was subject to land-grant rates; that the forwarder acted as the Government's agent (JA 21); and

that "when a freight forwarder ships over the lines which are virtually golden rails of land-grant, the Government of the United States is entitled to the lesser charge" (JA 21-22). The judgment reflects this ruling (JA 15).

Statutes Involved

Appellant is unable to specify the statutes, if any, upon which this appeal depends.

The judgment under review was entered in an action *upon contract*. The Government pleaded payment. Payment is claimed to have been made by application of credits resulting from overpayment by the Government of Appellant's previous bills. The overpayment allegedly occurred through the Government's failure to deduct land-grant allowances when it paid such bills.

The right to make land-grant deductions was dependent upon statute. Land-grant concessions were not required by any general enactment, but were exacted under separate acts granting Federal lands to each recipient railroad. The obligation of each road with respect to land-grant rates was dependent upon its original land-grant statute. At a later period statutes of fairly general application fixed the amount of the land-grant deduction.

Neither in its answer nor in its brief to the District Court was the Government able to identify and cite the particular statutes claimed to apply in this case. Instead, reference was made:

(1) To a summary of typical provisions annexed to the Stipulation of Facts as Exhibit J (R 41-44), and to the compilation of statutes found in note 9 to *Southern Pacific Co.* v. *United States,* 307 U. S. 393, 399, and the court's statement there that "The most prevalent condition was that 'the said railroad shall be and remain a public highway for the use of the Government of the United States,

free from toll or other charge upon the transportation of any property or troops of the United States' ''; and

(2) To the Act of June 7, 1924, c. 291, 43 Stat. 486, 10 U.S.C. 1375, reading:

> Payment shall be made at such rates as the Secretary of War shall deem just and reasonable and shall not exceed 50 per centum of the full amount of compensation, computed on the basis of the tariff or lower special rates for like transportation performed for the public at large, for the transportation of property or troops of the United States over any railroad which under land-grant acts was aided in its construction by a grant of land on condition that said railroad shall be and remain a public highway for the use of the United States, and for which adjustment of compensation is required in accordance with decisions of the Supreme Court construing such land-grant acts, or over any railroad which was aided in its construction by a grant of land on condition that such railroad should be a post route and military road, subject to such regulations as Congress may impose restricting the charge for such Government transportation, and such payment shall be accepted as in full for all demands for such service.

It is agreed that the shipments here involved were within the excepting clause of the Act of September 18, 1940, c. 722, 54 Stat. 954, 49 U.S.C. 65 and note following §65, providing in relevant part:

> Notwithstanding any other provision of law . . . the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to chapters 1, 8, 12 and 13 of this title of any persons or property for the United States, or on its behalf, except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use * * *

Statement of Points

1. The District Court erred in holding that a freight forwarder, by accepting Government military property for shipment on a Government bill of lading, contracted to make a land-grant allowance to the Government.

2. The District Court was in error in holding that a freight forwarder was bound as a matter of law to allow land-grant deductions with respect to Government military property shipped in forwarder service in mixed carloads and moved over the roadbed of a land-grant railroad as an underlying carrier.

Summary of Argument

I

The District Court held that Appellant, as a freight forwarder, had *contracted* to allow land-grant rates to the Government with respect to Government-owned military property transported in forwarder service during 1941-1943. In so holding, the Court disregarded express terms of the Government bill of lading; interpolated provisions into it which it does not contain; and misinterpreted its language.

The Court found as a fact that by the terms of the Government bill of lading, the shipments were to be made at the lowest rates available to the Government unless otherwise indicated on the face of the bill—and it found nothing which "otherwise indicated." The Government bill of lading (JA 29-31, Exhibits B-1, B-2 and B-3 to the Stipulation) contains no such provision. On the contrary, it specifies that except as otherwise indicated it is subject to the same conditions as those governing commercial shipments on the carriers' usual forms, and that shipment under the Government bill of lading shall take *no higher rate* than that which would apply to a commercial shipment.

The form contains no requirement for shipment at rates lower than commercial rates. Indeed, the "Certificate of Issuing Officer" on the face of the bill specifies that the carrier's rights to shipping charges are not affected by facts therein set forth.

Administrative directions on the back of the Government bill of lading require Government transportation personnel to familiarize themselves with land-grant *railroads* so that the Government may obtain the benefit of land-grant rates. The Government thus recognizes that unless *land-grant railroads* are used, the land-grant deduction is not available.

One of the conditions (No. 5) in the Government bill of lading provides that the shipment is made at the restricted or limited valuation specified in the tariff or classification of the carrier, at or under which the lowest rate is available unless otherwise indicated on the face of the bill of lading. In dealing with this condition in the bill of lading, the District Court, in its opinion (JA 20-21), failed to perceive that the condition has no bearing on the existence or non-existence of land-grant rates, and is relevant only where the Government seeks the application of so-called "released value" rates and declares the released value pursuant to Section 20 (11) of the Interstate Commerce Act, 49 U.S.C. 20 (11), so as to obtain the benefit of such rates. No such issue is here involved.

The new form of Government bill of lading adopted in 1943 (Exhibit B-3, JA 31) provides under "Administrative Directions" that property shipped subject to land-grant rates shall be segregated under the heading "Military." None of the property here involved was shipped under such designation.

The District Court opinion stated (JA 21) that Appellant acted in the capacity of agent for the Government. A

freight forwarder, moving property under a Government bill of lading, is no more an agent of the Government than it or any other carrier issuing a bill of lading is agent of the shipper to whom the bill is issued. Appellant was an independent contractor.

II

The District Court held as a conclusion of law (JA 14) that transportation of Government property by Appellant was subject to land-grant rates as provided by section 321 of the Transportation Act of 1940 (Act of Sept. 18, 1940, c. 722, 54 Stat. 954, 49 U.S.C. §65, and note following §65). Its opinion stated (JA 22-23) that Appellant was bound to allow land-grant deduction because it knew of a ruling to that effect in 1938 by the Comptroller General; because there was "no showing of any special consideration furnished to the Government for the giving up of this preference"; and because "the feature of a land-grant is very much like a covenant running with the land" which may not be waived without Congressional consent. The Court therefore concluded that

> "* * * Accordingly, when a freight forwarder ships over the lines which are virtually golden rails of land-grant, the Government of the United States is entitled to the lesser charge."

The Comptroller General's ruling and Appellant's knowledge or lack of knowledge thereof are immaterial. Appellant did not acquiesce in the Comptroller General's ruling of 1938 or in any other ruling, and has explicitly contested in court the Comptroller General's ruling with respect to the transactions presently in issue.

Appellant as a forwarder is not bound by any covenant running with railroad lands. It does not own, lease, or control any railroad, and has no privity of estate in the

roadbed or other property of any railroad. In its relation with railroads, it is a shipper *for all purposes.* It has received no concession from the Government (nor does it receive any from the railroads) which renders the allowance of land-grant deductions to the Government a matter of legal or moral obligation.

Argument

Introduction

This is a case in which the Government is seeking something for nothing, and in which the District Court has ruled that the Government is entitled to prevail on that basis.

The facts are simple. The Government made many small shipments of military property during and shortly prior to World War II. It could have delivered its shipments directly to railroads for conventional rail transportation at land-grant rates where applicable. Instead of doing so, it tendered them to a freight forwarder in obvious recognition that forwarders provide service different from, superior to, and faster and more efficient than the service of rail carriers. The superiority of forwarding service is demonstrated by the record (R 40 at p. 1), and acknowledged in the opinion of the District Court and in a multitude of judicial and administrative precedents. See, for example, *Chicago, M., St. P. & P. R. Co.,* v. *Acme Fast Freight,* 336 U. S. 465; *Freight Forwarding Investigation,* 229 I.C.C. 201, 286-287, 299; *Freight Forwarders, Motor Common Carriers, Agreements,* 272 I.C.C. 413; and *Chicago and Wisconsin Points Proportional Rates,* 17 M.C.C. 573, 579-580. In the decision last cited, the Interstate Commerce Commission said (pp. 579-580):

> "In this connection, also, we have not overlooked the testimony which they [shippers] submitted to the effect that they obtain much more expeditious service

> by employing the forwarders, for which these rates are chiefly proposed, than they would if they tendered their shipments directly to either the railroads or motor carriers, * * *."

In *Acme,* the Supreme Court said (336 U. S., at p. 467):

> "Forwarders are utilized by l. c. l. [less than carload] shippers because of the speed and efficiency with which they handle shipments, the unity of responsibility obtained, and certain services which forwarders make available."

In tendering its property for shipment via freight forwarder, with its attendant advantages over conventional rail service, the Government did not negotiate special rates pursuant to Section 22 of the Interstate Commerce Act, as it could have done even after enactment of Part IV of the Interstate Commerce Act on May 16, 1942, regulating freight forwarders (49 U.S.C. 1005(c)). It did not tender its property for forwarding under any shipping document containing an intelligible revelation that the Government claimed a rate reduction for land-grant railroad mileage employed in the forwarding process, or under any legislative pattern that entitled the forwarder to land-grant concessions from land-grant railroads.

Rather, the Government tendered its shipments to Appellant under a conventional Government bill of lading that contains no reference to land-grant rates except by way of admonition to the Government's administrative personnel that if land grant rates are sought, *land-grant railroads* must be used. The Government knew when it tendered its property for forwarding that Appellant, as a practitioner of a common calling, was obliged to accept shipments as tendered, to the limit of its capacity (cf. 49 U.S.C. 1004 (a)); that railroads, including land-grant roads, were forbidden by the Interstate Commerce Act to grant reductions

from their commercial tariff rates to any private shipper, including a freight forwarder (49 U.S.C. 6(7), 41); and that Appellant, in forwarding the Government's property, would consequently be obliged to pay full tariff rates to rail carriers whose services Appellant used. The Government knew also that forwarders had not been aided (as the railroads *had* been) by Federal benefactions which alone furnished the basis for exacting rate concessions from carrier-beneficiaries of the Government's largesse.

Nevertheless, the Government contends that a forwarder who has received no benefits from the Government, and who is eligible for no discount from land-grant railroads which *did* receive such benefits, is obligated to subsidize the military transportation requirements of the Government by absorbing land-grant deductions, without prospect of reimbursement. This contention is advanced without a vestige of statutory authority, after the Government's land-grant rights against the railroads themselves have been legislatively abandoned (49 U.S.C. 65).

We believe that the Government's position is technically indefensible and involves manifest injustice, which courts are required to avoid when avoidance is possible. *Lionberger* v. *Rowse,* 9 Wall. 468, 475; *Bate Refrigerating Co.* v. *Sulzberger,* 157 U.S. 1, 38. See also *Sorrells* v. *United States,* 287 U. S. 435, 446.

Point I

The Government Bill of Lading Imposed No Contractual Obligation upon Appellant to Ship Government Military Property at Land-Grant Rates.

The District Court states that "The solution of the case apparently lies in the field of the law of contracts" (JA 20). Much of its opinion is addressed to the proposition that the Government bill of lading is a contract sub-

jecting freight forwarders to the same burdens that land-grant acts imposed upon the railroad-beneficiaries of the land-grant system. We have vainly searched the opinion for corroboration of this ruling.[4]

The Court emphasizes that a freight forwarder is a common carrier (JA 18). The point is sound—and irrelevant. No law requires *common carriers* to haul Government property at land-grant rates. Common carriers include motor carriers subject to Part II of the Interstate Commerce Act; water carriers subject to Part III of the same Act, and to the Shipping Act, 1916 (46 U.S.C. 801); freight forwarders subject to Part IV of the Interstate Commerce Act; air carriers subject to the Civil Aeronautics Act (49 U.S.C. 401); communications companies subject to the Federal Communications Act (47 U.S.C. 151); and many other enterprises. We have never heard it suggested, however, that these instrumentalities, simply because they are common carriers, must deal with the Government as if they were land-grant railroads. Certainly a forwarder's status as a common carrier has no bearing upon the meaning of words in a Government bill of lading, under which the relevant inquiry is "whether the Government's draftsmanship succeeds in giving unequivocal notice" of the Government's stipulations. *Alcoa Steamship Co.* v. *United States,* 338 U.S. 421, 429. The same case holds that a Government

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[4] The law has long been settled to the effect that the use of a Government bill of lading does not in itself entitle the Government to land-grant rates on shipments via land-grant carriers. See *Pacific Electric Ry. Co.* v. *United States,* (S.D. Cal.) 71 F. Supp. 987, aff'd 172 F. 2d 222, and cases there cited at p. 989. Indeed, the Government bill of lading is not even accepted as conclusive evidence of the Government's ownership of property shipped thereunder. *Louisville & Nashville R. Co.* v. *United States,* 267 U.S. 395. The Court there stated (p. 398):

> "But the mere use of government forms of bills of lading is not conclusive on the question of ownership of property at the time of transportation, *and does not give the United States the right of transportation at land-grant rates.*" (Italics added).

bill of lading is to be strictly construed against the Government as its draftsman (338 U. S. at p. 425).

As to the bill of lading itself, the opinion of the District Court states (JA 20):

> "* * * the first thing that the Court notes is the fact that the prime contract of carriage in this case was the government bill of lading * * *. When one looks at Exhibit B-1, the government bill of lading, he is struck with the fact that the Government of the United States issued its own separate and independent bill of lading."

The fact may be striking, but it is hardly revelatory of any buried secrets in the somewhat pedestrian language of the document. Equally unhelpful are the Court's observations that Appellant's freight bills made reference to the Government bill of lading (JA 22); that Appellant had full freedom in the selection of rail carriers (JA 21); that Appellant knew of the Comptroller General's position as here advocated by the Government (JA 22); or that the shipments travelled on a romantic excursion over "golden rails of land-grant" (JA 22). The question remains as to what the conditions in the bill of lading are and what they mean. That question was not seriously considered or analyzed by the Court below.

In the three instances where the Court adverted to specific provisions of the document, it either misread its provisions or misunderstood their meaning. Thus, in its third finding of fact (JA 12-13), the Court said:

> "By the terms of said bills of lading, the shipments were to be made at the lowest rates available to the Government, unless otherwise indicated on the face thereof."

The fact is that the Government bill of lading contains no such provision.

The Court's opinion (JA 20-21) took note of the provision in the bill of lading that—

> "This shipment is made at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate is available unless otherwise indicated on the face hereof."

and of the further provision that:

> "Officers charged with the duty of providing or securing government transportation should familiarize themselves with *land grant railroads* in order that shipments may be made at the lowest rates available to the government *by the use of such line or lines equalizing rates therewith.*" (Italics added).

Of these provisions, the Court said (JA 21):

> "Those are specific conditions which are a part and parcel of this contract and to a very large extent control the rights and obligations that flow from it in favor of the Government of the United States."

The provision that shipment is made at the valuation under which the lowest rate is available has not the remotest connection with land-grant rates. Section 20(11) of the Interstate Commerce Act (the Cummins Amendment) authorizes the declaration of a "released value" of property in consideration of reduced freight rates, resulting in a reduced measure of a carrier's liability in case of loss or damage. See *Chicago, M. St. P., Pacific R. Co.*, v. *Acme Fast Freight,* 336 U. S. 465, 486, footnote 26. The released value condition in the Government bill of lading, to which we have already referred, means only that where "released value" rates are sought by the Government it must declare the value that reflects the released (i.e., reduced) rate which it desires to be applied. That provision applies not only to land-grant railroads, but to all rail-

roads and other carriers subject to the Interstate Commerce Act.[5]

The quoted provision relative to the duties of Government transportation officers to familiarize themselves with land-grant railroads lends no support to the District Court's opinion. The provision *is* significant, but it points *not* in the direction travelled by the District Court, but in the opposite direction.

Government transportation officers are instructed to become familiar with land-grant railroads so that Government shipments may move at the "lowest rates available * * * *by the use of such line or lines equalizing rates therewith.*" Language could not express more clearly the Government's understanding that if it means to move its freight at land-grant rates, it must ship such freight by land-grant railroads (or by equalizing lines). The converse inevitably follows: If the Government does not use such railroads, it loses its land-grant deduction. In the instances presently under review, the Government did not use land-grant railroads but used the better, faster and more comprehensive service of a freight forwarder. It follows that in strict accordance with the Government's concept of what it must do to secure its land-grant rates, it surrendered them when it used freight forwarder service instead of shipping by rail.[6]

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[5] The valuation clause of the Government bill of lading dovetails with the provision in Section 2A of the railroad commercial bill of lading (Ex. C-2, R 33) to the effect that in cases not prohibited by law, where a lower value than actual value has been agreed to by the shipper, such value represents the limit of the carrier's liability.

[6] The basic assumption of the Government bill of lading is that only railroads are liable to give land-grant deductions, and a freight forwarder is not a railroad. Section 402(5) of Part IV of the Interstate Commerce Act (49 U.S.C. 1002(5)) defines a freight forwarder as any person which holds itself out to the general public as a common carrier *otherwise than as a carrier subject to Parts I, II or III of the Act.* Part I relates to railroads, Part II to motor carriers, and Part III to water carriers.

Condition No. 2 of the Government bill of lading (Ex. B-2, JA 30) provides that unless otherwise specified, the Government bill "is subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier." The sample bill of lading (Ex. B-1, JA 29) makes no exception to this provision. Therefore, insofar as the case hinges upon contract, the Court should apply the same rules as govern commercial shipments, which always move at tariff rates.

Condition No. 3 of the Government bill of lading (Ex. B-2, JA 30) provided that shipment thereunder shall take no *higher* rate than would be charged under a uniform straight bill of lading. By no process short of outright revision can this be read as requiring a rate *lower* than commercial rates.

The 1943 revision of the Government bill of lading provides in item 5 of its "Administrative Directions" (Ex. B-3, JA 31):

> "5. In those departments and establishments which ship property the nature of which makes it subject to land grant rates, and where such rates may be appli-

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A freight forwarder is none of these, and therefore cannot be within the instruction which recognizes that land-grant rates are available on shipments via railroads only.

The District Court interpreted this Court's decision in *Universal Carloading and Distributing Co., Inc.* v. *Railroad Retirement Board,* 84 App. D.C. 188, 172 F. 2d 22, as a determination that forwarders are "in substance engaged in the railroading business." (JA 18). The question was whether a freight forwarder was subject to the Railroad Unemployment Insurance Act, 45 U.S.C. 351 *et seq.,* which applied to "* * * any company which is directly or indirectly owned or controlled by one or more such [railroad] carriers * * * and which * * * performs any service * * * in connection with the transportation of * * * property by railroad * * *." The decision merely held that Universal was controlled by the New York Central Railroad, and that it performed a service in connection with the transportation of property by railroad. This is quite different from a ruling "that it was in substance engaged in the railroading business."

> cable over all or part of the route, the words 'Military' or 'Nonmilitary' should be placed on the original bill of lading and all copies thereof in a conspicuous manner immediately preceding the first item in the column headed 'description of articles.' If the same bill of lading covers both 'Military' and 'Nonmilitary' items, appropriate groupings should be used, each conspicuously identified."

This provision was apparently adopted in recognition of the surrender by the Government of its land-grant rights as to property other than military property, under section 321 (a) of the Transportation Act of 1940, 49 U.S.C., note following sec. 65. All of the property here involved moved after 1940, and it was not described as military. Therefore, if, as the District Court asserts, Appellant's rights are a matter of contract, the omission from the bill of lading of the "military" designation would seem to mean that the Government did not consider that land-grant rates were available even though the shipments consisted of military items.

The District Court erroneously characterized Appellant as the Government's agent (JA 21). The materiality of such characterization is unexplained, but we assume that in holding Appellant to be a Government agent, the Court intended to subject Appellant to the administrative direction in the Government bill of lading requiring Government transportation officers to obtain the lowest available rates by the use of land-grant railroads. The law is firmly established that a forwarder performing the type of service offered by Appellant is not the shipper's agent, but rather, is an independent contractor subject to the same measure of contractual responsibility as any other carrier. *Chicago, M., St. P. & Pac. R. Co.* v. *Acme Fast Freight,* 336 U.S. 465, 484. Cf. *United States* v. *American Union Transport,* 327 U.S. 437, 443.

Forwarders of the type which the Supreme Court characterized as "agent-forwarders" were described as follows in the *Acme* decision (336 U.S. at p. 484):

> "* * * The term was originally applied to persons who arrange for the transportation by common carrier of the shipper's goods. The forwarder did not necessarily consolidate the individual consignments into carload lots, and its duties, as agent of the shipper, went no farther than procuring transportation by carrier and handling the details of shipment. Forwarders of this type charged fees for their services, which the shipper paid in addition to the freight charges of the carrier utilized for the actual transportation."

Of forwarders such as appellant, who perform consolidation and related services, who issue bills of lading in their own names, and who assume full responsibility for moving shipments from origin to destination, the Court said in the same case (336 U.S., at pp. 484-5):

> "* * * Later, a different type of forwarding service was offered. This forwarder picked up the less than carload shipment at the shipper's place of business and engaged to deliver it safely at its ultimate destination. The freight forwarder charged a rate covering the entire transportation and made its profit by consolidating the shipment with others in carload quantities to take advantage of the spread between carload and l. c. l. rates. It held itself out not merely to arrange with common carriers for the transportation of the goods, but rather to deliver them safely to the consignee. The shipper seldom if ever knew which carrier would be utilized in the carriage of his shipment.
>
> This difference in function was recognized very early by the courts, and differing standards of liability were imposed. When goods handled by an agent-forwarder were lost or damaged, it was liable to the shipper only for its own negligence, including negligence in selecting a carrier. If, on the other hand, the shipment had

> been entrusted to a forwarder of the second type—i.e., one who contracted to deliver the goods to the consignee at rates set by itself—the forwarder was subjected to common carrier liability for loss or damage whether it or an underlying carrier had been at fault. The fact that the forwarder did not own the carriers whose services it utilized was held to be immaterial. Its undertaking was to deliver the shipment safely at the destination. Common carrier liability was the penalty for failure of fulfillment of that undertaking.
>
> The Freight Forwarder Act encompasses only the second type of forwarder described above. * * *"

Since it is agreed that appellant is subject to the Freight Forwarder Act (JA 26), it is undeniable that it is a forwarder of the second type referred to in the foregoing quotations—i.e., it operates subject to the full range of common carrier liabilities.[7] Its attributes are no more those of an agent than are those of a railroad entering into a common carrier engagement with a shipper.

Point II

Freight Forwarders Are Subject to No Statutory Liability Requiring Them to Transport Government Property at Land-Grant Rates.

As heretofore indicated, neither the Government nor the District Court points to any statute requiring land-

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[7] The attributes of the agent forwarder are clearly analyzed in *United States* v. *American Union Transport,* 327 U.S. 437, which emphasizes that those forwarders who are shippers' agents assume no responsibility for actual transportation. The Court said (p. 443):

> "By engaging in these many activities of the forwarding business, independent forwarders—and particularly the appellees—act as agents of the shipper. *They assume no responsibility for the transportation of goods.*" (Italics added)

This Court itself recognized that Appellant was a forwarder of the second type in *National Air Freight Forwarding Corp.* v. *C.A.B.,* 90 U.S. App. D.C. 330, 197 F. 2d 384.

grant concessions from freight-forwarders with respect to Government shipments. In the pleadings and throughout the proceedings in the District Court, the Government has discussed the subject in general terms, referring to various land-grant acts by types rather than by citation of specific enactments, and claiming that as a matter of policy, obligations which Congress imposed upon railroad beneficiaries of public land-grants should be judicially extended to cover freight forwarders. Appellant contends that unless the Government can point to a statute subjecting freight forwarders to land-grant restrictions, or to a policy which dictates that they be treated in the same manner as land-grant *railroads*, the judgment of the District Court must be reversed.

The applicable precedents call for a reasonable construction of the land-grant statutes and forbid their interpretation otherwise than in accordance with their fair intendment. In *Lake Superior & M. R. Co.* v. *United States*, 93 U.S. 442, 454-5 the Court said:

> "It might be very convenient for the Government to have more rights than it has stipulated for; but we are on a question of construction, and, on this question, the usus loquendi is a far more valuable aid than the inquiry what might be more desirable."[8]

The same language was quoted with approval in *United States* v. *Galveston, H. & S. A. R. Co.*, 279 U.S. 401, 404, where the Court also stated relative to land grants:

> "The terms of the obligation are to be sensibly and fairly read according to the words employed and not expanded or restricted by construction."

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[8] The decision held that under a land-grant act providing that "the said railroad shall be, and remain, a public highway for the use of the Government of the United States, free from all toll or other charge for the transportation of any property or troops of the United States", the Government was entitled only to the free use of the road bed, but not to free use of the railroad's equipment or to free transportation service.

The elemental reasons for not treating a freight forwarder as a land-grant railroad are that: (a) the freight forwarder is not a railroad and neither owns, operates nor leases any railroad, or any part thereof, but deals with railroads as a shipper under the commercial uniform bill of lading contract; and (b) the forwarder has received no grants of land.

As stated in *Henry H. Cross Co.* v. *United States* (C. C. A. 7th), 133 F. 2d 183, 186:

> "A land grant provision is in the nature of a contract between the government and the carrier, whereby the former agrees to convey the right of way for the construction of a railroad (or other form of carriage), for the consideration of a reduced toll or charge for the transportation of government property."

In the absence of a Federal grant to the carrier and an undertaking by the carrier to offer rate concessions in consideration of the grant, there is no basis in law or in public policy for claiming that the carrier is subject to land-grant restrictions concerning its rates for carriage of Government property.

Exhibit J to the Stipulation of Facts (R 41-44) presents a sampling of representative land-grant acts. Some of them are irrelevant as pertaining only to the carriage of mail. Others, such as the Act of July 1, 1862 (12 Stat. 489) merely required that the charges of land-aided railroads be reasonable and not in excess of those paid by private parties. Still others, such as the Act of September 20, 1850 (9 Stat. 466), relating to the Illinois Central Railroad, provided that the aided railroads should be public highways for the use of the Federal Government, free from any toll or other charge for the transportation of its troops or property. The Act of July 27, 1866 (14 Stat. 292, 297), relative to the Atlantic and Pacific Railroad, and several

other acts, provided for Government transportation at such rates as Congress might impose; whereas the Act of July 25, 1866 (14 Stat. 239), granting lands in aid of the California and Oregon Railroad, provided that Federal troops and property should be carried without any charge to the Government.

Various statutes relaxing or otherwise altering the obligations of land-grant railroads were enacted over a period of years, as set forth in Exhibit J (R 43-44). By Act of July 16, 1892 (27 Stat. 174, 180), Congress provided that rates over stated types of land-grant railroads should be such as the Secretary of War might deem just, but not more than 50 percent of the rates charged the general public. Equivalent legislation is still in force (10 U.S.C. 1375). A large collection of land-grant statutes, classified as to type, is found in *Southern Pacific Co.* v. *United States,* 307 U. S. 393, 399, footnote 9. The type of land-grant statute which the Supreme Court there characterized as the "most prevalent", provided that "the said railroad shall be and remain a public highway for the use of the Government of the United States, free from toll or other charges upon the transportation of property or troops of the United States."

The statutes providing that land-grant railroads should be public highways for the use of the Government were interpreted in *Lake Superior & M. R. Co.* v. *United States,* 93 U. S. 442, to require the railroad to furnish only free use of its roadbed and structures. To the Government's claim that the statutory condition required the railroad to furnish equipment and perform service, the Court said that acceptance of the Government's argument "would invest the Courts with the power of making contracts instead of the parties to them" (93 U. S. at p. 455).

All the land-grant acts to which our attention has been

invited prescribed rate reductions for *Government use of a railroad*. The general provision fixing their rates at no more than 50 percent of commercial rates (10 U.S.C. 1375) applied only to transportation "of property or troops of the United States" over "any railroad" which was aided in construction by a grant of land on the conditions therein set forth.

It is evident that freight forwarders are *not* railroads. As we show in greater detail below, a railroad transporting shipments under the control of a forwarder is bound to treat the forwarder as a shipper for all purposes, and is not concerned with the ownership of the forwarded property. Accordingly, the Government's shipment of property via a forwarder cannot be deemed to involve the use of the underlying railroad by the United States; and the railroad is bound to treat the property as if it belonged to the forwarder who ships it, and to disregard its ownership by the United States. Unless property moving via land-grant railroad is *Government* property, land-grant rates are not allowable. *Henry H. Cross Co.* v. *United States* (C.C.A. 7th) 133 F. 2d 183.

The Government and the District Court have sought to stretch the land-grant statutes to cover forwarding service on the theory, as stated in the Court's opinion (JA 22) that "the feature of a land-grant is very much like a covenant running with the land"—a pronouncement apparently derived from *Chicago, St. Paul, Minneapolis & Omaha Railway Company* v. *United States,* 217 U. S. 180 (hereinafter called *Omaha*). The Government relied extensively upon that decision in the District Court.

The *Omaha* decision held that a railroad company transporting mail from Sioux City to Minneapolis in its own trains, which it operated with its own locomotives and its

own train crews, partly over its own railroad and partly as the lessee of tracks of land-grant railroads, was bound to observe land-grant mail rates with respect to mileage over the leased land-grant roadbeds. The Court held that the land-grant covenant bound not only the grantee railroad, but its lands as well. The decision rested in considerable measure upon the necessity of preventing evasion of the land-grant obligation. The Court stated that a land-aided road could not be sold to avoid the grantee's obligations to the Government, and that if the Government's rights could not be defeated by sale, they could not be defeated by lease.

We contend that the *Omaha* decision does not cover the present case. It means no more than that any operator of trains over a land-grant roadbed under a lease is bound by the land-grant covenant of the original grantee. If that were not true, the Government might readily be deprived of the rights it reserved when the grant was made.

A covenant running with the land is normally enforceable only against a person having privity of estate with the original grantee. *Swiss Oil Corp.* v. *Dials,* 232 Ky. 298, 22 S.W. 2d 912, 914; *Lingle Water Users' Ass'n* v. *Occidental Building and Loan Ass'n,* 43 Wyo. 41, 297 P. 385; *Rosen* v. *Wolff,* 152 Ga. 578, 110 S.E. 877. In the case last cited, the Court said (110 S.E. at p. 880):

> "A true covenant which runs with the land runs by reason of privity of estate and can only be enforced at law by the original parties thereto or their privies."

In the *Omaha* decision, the Court found the necessary privity in the lessor-lessee relationship.

The Government's rights will not be defeated or evaded if the *Omaha* decision is limited to the facts on which it was based. The use of a railroad by a freight forwarder re-

lieves a land-grant railroad of none of its responsibilities to the Government, since *all* rail service over the road remains available to the Government on land-grant terms if the Government elects to use it. Moreover, the freight forwarder cannot be deemed to be conducting a railroading operation over the land-grant roadbed, such as the lessee was clearly conducting in the *Omaha* case.

A freight forwarder is not a railroad, or an operator or the lessee of a railroad. On the contrary, it is merely a user of railroad service in the same capacity as any other shipper. In the *Acme* case the Supreme Court held that the railroad "must treat the forwarder as a shipper *for all purposes*" (336 U.S., at p. 489). It said (pp. 467-468):

> "* * * In its relations with its customers, a forwarder is subjected by the Act to many of the requirements and regulations applicable to common carriers under Parts I, II, and III of the Act. In its relations with these carriers, however, the status of the forwarder is still that of shipper. * * *"

The Court's refusal to draw a parallel between a forwarder and a railroad was so uncompromising that it declined to recognize the forwarder as an initial carrier even for the purpose of asserting under the Carmack Amendment (49 U.S.C. 20) a right-over against underlying rail carriers for loss or damage to freight shipped by the forwarder over their lines.

The difference in status between a forwarder and a railroad depends upon many factors besides the circumstance that it deals with the railroad as a shipper. We have already indicated that in relation to the original consignor of a shipment, the forwarder stands in the relation of a carrier. Its carrier service, however, differs materially in scope and in extent from the service provided by railroads.

The Supreme Court in *Acme* took account of the differences, stating (336 U.S., at p. 480):

> "* * * The underlying carrier's haul involves a different shipment, a different consideration, a different origin, a different destination, and a different consignor and consignee than are involved in the forwarder's undertaking."

The Court also noted (p. 467) that:

> "* * * The railroad has no knowledge of the contents of the car, the identity of the individual shippers, or the ultimate destinations of the consignments."

The basic forwarder functions have already been described. Among the benefits which forwarder service affords and railroad service does not are pick-up service at origin, delivery to the ultimate consignee at destination, and the forwarder's acceptance of responsibility for "loss or damage to the consignment occurring at any time between pick-up at the point of origin and delivery at destination." See *Acme,* 336 U.S., at pp. 486-487. These advantages to the shipper are in addition to those hereinabove summarized and noted by the courts. See pp. 12-13, *supra.*

Since the Government in using a forwarder is obtaining service of a different kind, quality, and extent than it could obtain directly from the railroads, it would be unjust to let it claim the same concessions that would admittedly have been its due had it used the more restricted service that land-grant railroads would have provided if the shipments had been tendered to them directly. Since the Government did not purchase railroad service, but purchased forwarder service instead, it is bound by its own bargain, and cannot claim advantages or concessions that were available only in connection with a service different from the service actually used. *Atchison, T. & S.F. R. Co.* v. *United States,* 256 U. S. 205.

The injustice of the result sought by the Government is magnified by the fact that the concession to the Government would necessarily be paid out of the wrong pocket—i. e., by the forwarder who received no consideration in the form of land-grants, rather than by the railroad which did. That a railroad handling Government property shipped in forwarder service need not and indeed may not make rate concessions to the forwarder is established by the circumstances that, as stated in *Acme,* (1) "* * * the carrier is not concerned with questions of ownership, but must treat the forwarder as a shipper * * *" (336 U.S., at p. 487), and (2) "It is a shipper to whom carriers are forbidden to give any undue or unreasonable preference *in any respect whatsoever* * * *" (336 U. S., at p. 480).[9]

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[9] The record shows that a suitable mechanism could have been devised by the Government to protect its land-grant rates even where forwarder service is used, and without the illogical and unjust consequences that flow from the Government's position in this case. Exhibit G (R. 38) is a special agreement between Appellant and the War Department for forwarding service, executed under Section 22 of the Interstate Commerce Act (49 U.S.C. 22). The agreement initially provided in Paragraph 3 that the forwarder need not protect land-grant rates where the Department had administratively determined that freight forwarder service was essential to the Government's needs (R. 38 at p. 2). By amendment, the parties cancelled this arrangement and provided that the forwarder should furnish to the railroads an itemization of all Government property that would have moved at land-grant rates if shipped directly by rail. This arrangement was "for the purpose of enabling the United States General Accounting Office to collect from the railroads the applicable, proportionate, land-grant deductions for the movement via railroad." (R. 38 at p. 7).

The procedure represented by the contract amendment had been agreed to by the railroads, and approved by the Comptroller General in a letter dated December 3, 1942, to the Secretary of War (Exhibit H, R. 39). As shown by that letter, the arrangement contemplated payment of full commercial rates by the Government to the forwarder and by the forwarder to the underlying rail carriers. The rail carriers then made payment of land-grant allowances directly to the Government.

This plan had the virtue of protecting the Government by placing the burden where it belonged—upon the railroads, which had received benefits and assumed disabilities under the land-grant acts, rather than upon the forwarders who were in no way involved in the Government's land-grant program.

Many decisions have recognized that freight forwarders such as appellant are substantially similar to express companies. In *In Re Express Rates, Practices, etc.*, 24 I.C.C. 380, 431, the Interstate Commerce Commission concluded "that it is proper for the Government to treat the express company as a freight forwarder by passenger train . . ." In *Coordination of Motor Transportation*, 182 I.C.C. 263, 370, the Commission said:

> "The relation of the so-called 'express freight companies' to the railroads is similar to that of the forwarding companies. Both should be made subject to the provisions of the interstate commerce act."

See also *Chicago, M., St. P. & Pac. R. Co.* v. *Acme Fast Freight*, 336 U.S. 465, 477; *Freight Forwarding Investigation*, 229 I.C.C. 201, 211.

In 1878 the Acting Attorney General of the United States held, 16 Ops. Atty. Gen. 607, that the reduced rate covenant in land-grant acts did not apply to shipments handled for the Government by express companies. In that opinion, the Attorney General said (p. 610):

> "The Act of 1875 refers to no parties excepting railroad companies. It therefore furnishes no rule of action for the cases mentioned.
>
> "Leaving that act, therefore, out of consideration, it seems to me that generally in the cases in which officers of the United States require the services of common carriers other than the railroad company over whose line the transportation is to be done, such services constitute an additional consideration of so much weight as to prevent any presumption of impropriety in the rate. For instance, if the United States have occasion for the services of an express company upon a line, part or all of which lies over a land-grant road, inasmuch as the connection and the rates as between the express company and the railroad company are fixed by general arrangement, it would probably be

> impracticable for the United States to obtain a deduction for toll. In such case, although the item of transportation done by the United States through the express company may go to swell the amount of toll received by the land-grant railroad company, it seems that this would be a case of *remota causa,* not within the terms of exclusion of the land-grant act."

The ruling of the Attorney General was recognized and followed by the Comptroller of the Treasury for many years, as well as by the Comptroller General. See 8 Comp. Gen. 484. In the decision cited, the Comptroller General, in 1929, refused to follow the Attorney General's ruling in connection with the Railway Express Agency, Inc. He ruled with respect to that company that its services to the United States were subject to land-grant deductions. The opinion makes clear that the only reason for so ruling was that Railway Express Agency, Inc. was not an independent enterprise, but was a new corporation organized by the railroads to serve as their agency and instrumentality in conducting the express business. He recognized, however, that prior to the organization of Railway Express Agency, Inc.,—

> "* * * express service was performed by an agency distinct and separate from the railroads, and for that reason, the grant subjecting the railroad to deductions being to the railroad itself, *there was no privity insofar as the express agency* was concerned to subject it to such deductions, regardless of the fact that under agreements existing between the railroad company and the express company a part of the express charges was a revenue of the railroad." 8 Comp. Gen. 484, 486.

Although the Comptroller General now claims that freight forwarders in general and Appellant in particular are subject to land-grant obligations in connection with their services to the Government, his reasoning is directly in conflict

with the reasoning that exempted express companies prior to the organization of Railway Express Agency, Inc. as a railroad instrumentality. If *independent* express companies may carry Government traffic without land-grant deduction, independent forwarders such as appellant (who are no more in privity with the underlying railroads than were the independent express companies) must have identical rights.

Conclusion

For the foregoing reasons, the judgment of the District Court should be reversed insofar as it dismissed with prejudice Appellant's claim for $3,015.04, with instructions to the District Court to enter judgment in Appellant's favor for that amount.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing brief was served on Joseph Kovner, Attorney for Defendant, by mailing a copy thereof, first class postage prepaid, addressed to him at Room 3134, Department of Justice, Washington, D. C., on September 22, 1953

ROBERT E. QUIRK.

No. 11898

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL CARLOADING CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEE WITH SUPPLEMENTAL APPENDIX

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United States Court of Appeals
For the
District of Columbia Circuit

FILED NOV 25 1953

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QUESTIONS PRESENTED

(1) Whether the land grant acts applied to the transportation of government property over land grant railroads in freight forwarder service.

(2) Whether freight forwarder contracts for the transportation of government property at the lowest net rates available for the government were intended to provide for the land grant deduction from the published tariff.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11898

NATIONAL CARLOADING CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

BRIEF FOR THE APPELLEE WITH SUPPLEMENTAL APPENDIX

STATEMENT OF THE CASE

The facts, stated by the appellant, require a counterstatement in certain essential respects. The controversy in this case relates to 60 different bills of the appellant, covering over 300 different shipments. (S. App. *infra*, p. 28.)[1] These shipments were made in the period from October 1941 through January 1944. Most of the shipments were made from October 1941 to January 1943.

The facts of one shipment were stipulated as representative of all (J. App. 24, 29). As the bill of lading covering this shipment shows, this was a shipment on October 7, 1941, of 800 pounds of iron valves from Pittsburgh, Pennsylvania, to Richmond, California (J. App. 29). The valves were an item of supply for the Emergency Ship Construction Program, purchased by the United States Maritime Commission from Manning, Maxwell & Moore, Inc., at Pittsburgh, Pennsylvania, to

[1] The shipments are those referred to in paragraph 2 of the stipulated facts (J. App. 24) and are tabulated in Exhibit A, which is reprinted as a supplemental appendix with this brief and referred to as S. App. *infra*, p. 28.

be delivered to the Richmond Shipbuilding Corporation at Richmond, California.

The specific movement of this shipment can be fairly inferred from the general description of the handling of such shipments by appellant in freight forwarder service. (J. App. 24–25. The shipment was picked up by appellant's truck at the point of origin in Pittsburgh, at which time a Government bill of lading was issued covering the shipment from point of origin to ultimate destination. It was obviously a small shipment, of less-carload dimensions. The appellant then assembled this shipment with other less-carload shipments and delivered it in a carload lot to a railroad at Pittsburgh for transportation by rail to the rail point nearest the ultimate destination, at Richmond, California. Appellant secured the use of the railroad for this shipment by a contract, in the form of a uniform or commercial bill of lading (Ex. C–1, S. App. *infra*, 29).[2] Upon completion of the rail transportation, appellant received the valves from the railroad and delivered them by truck to the shipyard.

In the meantime, the original government bill of lading for the iron valves was properly accomplished, that is, it was mailed to the consignee, Richmond Shipbuilding Corporation, and on January 5, 1952, the Richmond Shipbuilding Corporation surrendered the original government bill of lading to appellant, with an indorsement at the bottom of the bill that the goods had been received (J. App. 29). Shortly thereafter, appellant submitted its freight voucher for the charges due for the transportation of the iron valves, together with other items, to the Maritime Commission for payment. The voucher covering the shipment of iron valves is in evidence (Ex. D–1, J. App. 32). In submitting the voucher, appellant certified "that the rates charged are not in excess of the lowest net rates available for the Government, based on tariffs effective at the date of serv-

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[2] Exhibit C–1, S. App. 29–31 is a copy of a typical commercial bill of lading used in connection with the shipments involved in this case (J. App. 25). It was not possible to locate the commercial bill of lading for the rail transportation of the iron valves, but Exhibit C does present the relevant facts showing the terms upon which appellant secured the use of railroads for the transportation of the shipments involved in this case.

ice." Appellant's bills were paid as presented, subject to post-audit and assessment of overcharges by the General Accounting Office, pursuant to 49 U. S. C. 66, *infra*.

On October 28, 1943, the General Accounting Office notified appellant that its bill for the freight charges for the shipment of the iron valves contained an overcharge in the amount of $6.41 because the amount originally paid did not reflect the land grant deduction from the published tariff (Ex. E, S. App., *infra* 32, 33). Appellant agrees that this is the amount of the land-grant deduction, if land grant rates are applicable (Ex. A, columns 13 and 14, S. App., *infra*, 28). This concession means that there is no dispute concerning the railroad route, which yields the lowest net rate to the Government for the shipment of the iron valves from Pittsburgh, Pennsylvania, to Richmond, California. See *Southern Railway Co.* v. *United States*, 322 U. S. 72, 75.

Appellant, however, did not agree that land-grant rates are applicable and the amount of the overcharge was deducted from a later bill. The question here is the proper rate applicable to the shipment of 800 pounds of iron valves from Pittsburgh, Pennsylvania, to Richmond, California, and the other shipments which it typifies.

The question of the application of the land-grant rates to the charges of freight forwarder has not been confined to the shipments involved in this case. As far back as 1921, the Comptroller of the Treasury notified freight forwarders, by a ruling made public in published decisions of the Comptroller, that the transportation of Government property over land-grant lines by a freight forwarder was subject to land-grant rates. 27 Comp. Dec. 1043. Again on March 16, 1938, in connection with a specific bill of the appellant in this case, the Acting Comptroller General notified appellant that its charges for the transportation of government property were subject to reduced land-grant rates (Exhibit F, J. App. 35–36).

Furthermore, on September 14, 1942, appellant entered into an agreement with the War Department providing that—

> land grant rates will not be applicable to the transportation [of government property in freight forwarder service] provided a certificate in substantially the follow-

ing language has been inserted on or attached to the bill of lading (MS. Comp. Gen., B–25583, May 4, 1942, and May 23, 1942):

"ADMINISTRATIVELY DETERMINED THAT THIS FREIGHT FORWARDER SERVICE IS REQUIRED TO MEET THE NEEDS OF THE GOVERNMENT AND THAT EQUIVALENT SERVICE BY OTHER MEANS IS NOT AVAILABLE AT LOWER COST.

. . . . . "

(Signature and rank of certifying officer)

(Exhibit G, S. App. *infra,* 33, 35.)

There was no such certificate in the bills of lading in dispute in this case. On the contrary, it is expressly stipulated that there was no agreement for special services with regard to the shipments in controversy (J. App. 26; Findings of Fact 6, J. App. 13).[3]

It is to be noted that, even as to the shipments covered by the September 14, 1942 agreement, on which appellant's charges were not to be subject to land-grant reductions, the Government, by contemporaneous agreement with the railroads, secured the land-grant reduction involved in any transportation of government property in freight forwarder service from the railroads (S. App. *infra,* 38). In short, the exception of freight forwarder charges from land-grant reductions was effected only by a specific agreement with the freight forwarder to that effect and whenever there was such an agreement, the Government obtained the land-grant reduction directly from the railroads.

Appellant contends in this Court, as it did in the District Court, that notwithstanding the absence of any special agree-

[3] The stipulation shows that of the amount sued for, $2,117.28 was covered by agreements for special services, and judgment in this amount was entered for appellant by the District Court. (J. App. 15.) While the stipulation shows only $2,188.13 as *not* covered by an agreement for special services (J. App. 26–27), the dismissal of appellant's claim for $3,015.04 reflects the final agreed amount in this category, after deducting the amount of $315.40 dismissed without prejudice and a $60.00 overstatement of the accounts. (See J. App. 13–14, Finding of Fact 7.)

ment, its charges for the transportation of Government property over a land-grant aided railroad are nevertheless not subject to land-grant reductions. Appellant rests its position on the ground that its contracts for transportation did not provide for land-grant rates, and that the statutes providing for the land-grant rates are not applicable to a freight forwarder making use of land-grant railroads for the transportation of Government property. The District Court found that the contracts involved in this case were intended to afford the Government the benefit of the applicable land-grant rates for any use of land-grant railroads or railroad routes subject to land-grant rates (J. App. 13). It has further found that—

> * * * In the performance of the contracts represented by said bills of lading, plaintiff used land-grant railroads or railroad routes subject to land-grant rates. The use of railroads by the plaintiff in the performance of the contracts represented by said bills of lading was a regular part of plaintiff's business as a freight forwarder. Plaintiff is a transportation company and operates a service directly connected with the transportation of goods by railroad (idem).

The District Court concluded, among other things, that—

> The use of railroads for the transportation of property of the United States by the plaintiff as a freight forwarder is a use of railroads for the transportation of property of the United States within the meaning of land-grant acts, providing for reduced rates to the United States (J. App. 14).

We submit that the findings of fact of the District Court are free from error and that its conclusions of law are correct.

STATUTES INVOLVED

Appellant has reprinted at pages 7–8 of its brief the following statutes:

(1) The terms of the most prevalent condition of the land grant acts, as set forth in Section 4 of the Act of September 20, 1850, 9 Stat. 466, 467.

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(2) The Act of June 7, 1924, 43 Stat. 486, 10 U. S. C. 1375; and

(3) Section 321 (a) of the Transportation Act of 1940, 54 Stat. 954, 49 U. S. C. 65 (Historical Note).

There is also involved:

(4) Section 322 of the Transportation Act of 1940, 54 Stat. 955, 49 U. S. C. 66, reading as follows:

> Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is reserved to the United States Government to deduct the amount of any overpayment to any such carrier from any amount subsequently found to be due such carrier.

SUMMARY OF ARGUMENT

The land-grant acts are the several statutes enacted mainly during the years 1850–1870, under which the United States received certain concessions in return for a grant of federal lands to aid the construction of a railroad. The land-grant acts typically provide that the railroad shall be a highway free for the use of the Government of the United States for the transportation of its troops or property. By virtue of these acts (until their repeal in 1946), charges for the use of a land-grant railroad in the performance of transportation services to the United States are subject to reduced land-grant rates. The otherwise applicable charges, usually set forth in a published tariff of a transportation company, must be reduced by an amount which reflects any such use of land-grant railroads. The amount of the reduction has been fixed by the Act of June 7, 1924, 10 U. S. C. 1375, *supra*, at 50% of the published tariff. Accordingly, the first question to be determined is whether the land-grant acts are applicable to the transportation in question. If they are applicable, the next question is whether the Government has by contract agreed to waive the benefit of the land-grant reduction.

We show first that the transportation of government property over land-grant railroads in freight forwarder service comes with the literal terms of the land-grant acts. Appellant, a transportation company, used land-grant roads in the performance of its contract for the transportation of government property, and its charges included the cost of the use of these roads. Appellant's major contention that the land-grants apply only to railroads, and not to freight forwarders, is answered by two decisions of the United States Supreme Court. In the first decision, *Lake Superior & Mississippi Railroad Co.* v. *United States,* 93 U. S. 442, the Supreme Court pointed out that, historically, the land-grant acts contemplated that the United States would use the land-grant railroads for the transportation of its property by hiring transportation companies which have no interest in the railroads themselves but use the railroads to conduct a carrying business on the railroads. Freight forwarders are just such transportation companies, they were engaged in the carrying business on railroads at the time of the land-grant acts. Moreover, appellant is not, as it contends, so different from railroads that it should not be subject to land-grant acts. Appellant is in fact, a wholly owned subsidiary of three railroads, and its business is a part of, and directly related to, railroad transportation. The essential operation of a freight forwarder is to provide railroad carload service for individual less carload shippers. It makes use of land-grant railroads as a regular part of its business, and as this Court has said, performs "railroad-like" functions. *Universal Carloading Corp* v. *Railroad Retirement Board,* 84 App. D. C. 188, 189, 172 F. 2d. 22, 24.

In the second major decision, *Chicago, St. P., M. & Omaha Ry. Co.* v. *United States,* 217 U. S. 180, the Supreme Court held that the land-grant acts applied to the use of land-grant railroads for the transportation of government property by any person or company whatever, and regardless of the terms upon which the person having the contract for the transportation with the Government, secures the use of land-grant railroads. The *Omaha* decision disposes of appellant's contention that its charges are not subject to land-grant rates because it secured the use of railroads for the transportation of government prop-

erty, as a commercial shipper without the benefit of the land-grant rate. The terms upon which appellant secures the use of railroads to perform its contracts for the transportation of government property over land-grant railroads are immaterial to the protection of the land-grant rate for any such transportation. Moreover, appellant cannot complain of this result, since the rates which appellant pays railroads for the transportation of government property are less than the rates it charges the Government, even with the land-grant reduction. The freight forwarder pays carload rates, but charges on the basis of the higher less-carload rates. We conclude our first point by showing that under long settled administrative rulings, which are entitled to great weight, the land-grant acts apply to freight forwarder charges for transportation of government property.

Our second point is that the contracts for the transportation of government property, in the case at bar, did not except this transportation from the land-grant acts. On the contrary, the contracts, embodied in government bills of lading, specified that the charges for the transportation shall not exceed the "lowest net rates available for the Government, based on the tariffs effective at the date of service." This provision means that the rate shall be the published tariff on the route between the transportation points which has the most land-grant mileage and, therefore, with the deduction of land-grant rates, yields the lowest net rate to the Government. In addition, the shipments were made on government bills of lading which invoke the land-grant rates, if the shipment is in fact government property. Appellant had notice that its charges were subject to land-grant deduction. The land-grant benefits are a valuable right that can be waived only by a contract for special services, or lower rates than the net land-grant rates. None of the contracts in dispute contained any agreement for special services or lower rates, and the record shows that even when the Government agreed to waive land-grant rates for special services by freight forwarders, it did so under arrangements with the railroads which protected the land grant benefits. In the case at bar, appellant contracted "in," and not "out" of the land-grant acts.

ARGUMENT

I. The land-grant rates are applicable to the charges of freight forwarders for the transportation of government property over land-grant railroads

Introduction—The applicable statutes

Appellant, a freight forwarder, furnished transportation for government property and used land-grant railroads to perform the service. The question is whether appellant's charges for this service are subject to the land-grant rates. The land-grant acts provided reduced rates for the transportation of government property over land-grant railroads. The land-grant acts apply to any transportation of government property over railroads, aided by land-grant, if the shipment in fact falls within the terms of the statutes relating to the land-grant rates. *United States* v. *Powell,* 330 U. S. 238; *Northern Pacific Railway* v. *United States,* 330 U. S. 248; *Henry H. Cross Co.* v. *United States,* 133 F. 2d 183 (C. A. 7); *Southern Pacific Co.* v. *Reconstruction Finance Corp.,* 161 F. 2d 76 (C. A. 9).

Unlike appellant, appellee has no difficulty in citing the specific terms of the applicable statutes. They are (1) Section 321 (a) of the Transportation Act of 1940, *supra* (2) the Act of September 20, 1850, 9 Stat. 446, *supra,* which sets forth the terms of the most prevalent condition of land-grant acts, and (3) 10 U. S. C. 1375, *supra,* which fixes the amount of the land-grant deduction from the tariff rate. Appellant's references to the lack of citation of the applicable statutes (Appellant's Brief, pp. 7, 23) refer only to the fact that a full list of all the land-grant acts was not cited in the court below. This was not done, however, because it was unnecessary. Appellant in its reply to the answer, as amended, stated the provisions of the land-grant acts in question (J. App. 6–7). Thus, appellant alleged that—

> During the early development of the railroads in the United States, Congress granted tracts of land to the railroads to aid their development. In consideration of the land grants, the railroads agreed to confer the free use by the U. S. Goverment of the granted roadbed of such railroads as a highway for the transportation by the Government in its own vehicle or in vehicles procured and employed at its expense.

In addition, the stipulation of facts presented, as Exhibit J, the following document:

> "History of Land Grant Provisions for Reduced Rate on Free Transportation up to Passage of Transportation Act, 1940," submitted by Mr. Joseph Eastman, as Director of Defense Transportation and member, Interstate Commerce Commission, and found at pages 9–10 in the Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 78th Congress, Second Session, on H. R. 4184, dated March 16, 17, 18, 21, 22, and 23, 1944 (J. App. 28).

This Exhibit stated the same terms of the land-grant acts referred to in appellant's reply:

> A majority of the land-grant acts, including the act of September 20, 1850 (9 Stat. 466), granting lands in aid of the Illinois Central, all of the other acts prior to July 1, 1862, and some thereafter, provided in substance that the aided railroads should be public highways for the use of the Federal Government, free from any toll or other charge for the transportation of its troops or property. The railroads receiving grants subject to this provision are hereinafter called free-toll lines (S. App. *infra,* 40).

The court below obviously knew the terms of the land-grant acts, for in reliance upon the pleadings, the stipulated exhibits, and the arguments of counsel, it said:

> * * * a common provision of such [land grant] contracts was that the railroad should be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States (J. App. 17).

It is apparent, too, that appellant in its brief here, despite its protestations, has no difficulty in stating the substance of the statutes involved. It notes that the most prevalent condition of the land-grant statutes provides that:

> the said railroad shall be and remain a public highway for the use of the Government of the United States, free

from toll or other charges upon the transportation of property or troops of the United States (Appellant's Brief, p. 25).[4]

10 U. S. C. 1375, it will be recalled, fixed the amount of the land-grant deduction at 50% of the applicable tariff "for the transportation of property of the United States over any railroad" aided by land-grant.

The applicable statutes are therefore in plain view and we now turn to the first one, Section 321 (a) of the Transportation Act of 1940.

A. The transportation of government property in this case comes within the exception of Section 321 (a) of the Transportation Act of 1940

The shipments in the case at bar moved during the years 1941 to 1944. During this period (and until the repeal of the land-grant acts in 1946), Section 321 (a) of the Transportation Act of 1940, *supra,* provided that the government should pay the full rate for the transportation of its property, except for transportation of property of the United States moving for a military or naval and not for civil use. It is, therefore, first necessary to determine whether the shipments fall within the terms of this exception. Appellant has suggested that there may be some question on this point, because, it says, the property was "nowhere described as military or naval property" (Appellant's Brief, pp. 4, 20). Appellant, however, has actually admitted that the shipments in question were moving for a military use within the meaning of Section 321 (a). Appellant states at page 8 of its brief that: "It is agreed that the shipments here involved were within the excepting clause of the Act of September 18, 1940." (This is Section 321 (a) of the Transportation Act of 1940.) Moreover, it was stipulated that if the shipments had been tendered directly to a railroad, they would have been subject to the land-grant rates (J. App. 25). In any case, the representative shipment

[4] Appellant states this observation was made by the Supreme Court in *Southern Pacific Co. v. United States,* 307 U. S. 393, 399, note 9. We suggest that the common citation to the most prevalent terms of the land-grant acts by the Supreme Court, Mr. Joseph Eastman, and appellant in its pleadings here, is sufficient for the purposes of this case.

in this case consisted of iron valves for the wartime construction of maritime vessels. The Supreme Court has squarely held "that procurement of cargo and transport vessels by the Maritime Commission is an outstanding example" of a military use, within the meaning of Section 321 (a). *Northern Pacific Railway Co.* v. *United States,* 330 U. S. 248, 253.

Since the shipments, in this case, come within the exception of Section 321 (a), the Government is not required to pay the commercial charges, if the reduced rates of the land-grant acts are applicable.

B. The transportation of government property in this case comes within the terms of the typical land grant acts and 10 U. S. C. 1375

1. These acts on their face are applicable

We submit that the transportation involved in this case falls within the literal terms of the two applicable statutes. The land-grant acts provide that an aided railroad shall be a public highway for the use of the Government of the United States free from toll or other charge upon the transportation of any property of the United States, and the provisions of 10 U. S. C. 1375 fix the amount of the land-grant reduction from the applicable tariffs, for the transportation of property of the United States over an aided railroad. The court below has found—and there is no question—that appellant used land-grant railroads, or railroad routes subject to land-grant rates, in the performance of its contract for the transportation of government property (J. App. 13).[5]

Appellant nevertheless argues that the statutes do not apply to the transportation service furnished by a freight forwarder, because, it says, the statutes apply only to railroads (Appellant's Brief, pp. 26–27); a freight forwarder is not a railroad and does not provide railroad transportation, but a different kind of service (Appellant's Brief, pp. 28–29). In addition it claims that it would be unjust to apply land-grant rates to

[5] The reference to railroad routes subject to land-grant rates means that appellant may also have used non-aided railroads which have agreed that their rates will be subject to the land-grant reductions. These so-called equalization agreements covered virtually all railroads competing with land-grant lines. See *Southern Railway Co.* v. *United States,* 322 U. S. 72; *United States* v. *Powell,* 330 U. S. at 240, n. 2.

freight forwarder service (Appellant's Brief, p. 30); and further that established administrative rulings have held that freight forwarder service is not subject to land-grant rates (Appellant's Brief, pp. 31–33). We believe that each of these contentions is without merit. We urge that the literal application of the land grants acts to the use of land-grant railroads by a freight forwarder for the transportation of government property is also supported by the decisions construing the acts, the equities in the case and prior administrative rulings.

2. The land-grant acts apply not only to the use of aided railroads by a railroad, but by any person or company whatever, including transportation companies like freight forwarders, regardless of the terms upon which the latter secures the use of aided railroads

Appellant's chief argument that the land-grant acts apply only to railroads is fully answered by the two decisions of the Supreme Court construing the land grant acts. *Lake Superior & Mississippi Railroad Co.* v. *United States,* 93 U. S. 442; *Chicago, St. P. M. & Omaha Ry. Co.* v. *United States,* 217 U. S. 180. In the *Lake Superior* case, the Supreme Court construed the very land grant act which is referred to in the pleadings in the case at bar, the exhibits herein, and discussed in the argument below. The question was whether the Government had to pay any charge whatever for the transportation of property over railroads aided on the condition that they "shall be highways for the use of the government free from all tolls or other transportation of its property or troops." 93 U. S. 443. The Court ruled that while these grants gave the Government the free use of the railroad track, the Government would have to pay for the locomotives and rolling stock used in the transportation of its property over the tracks.

In reaching this result, the Court examined in detail the history of the land grant acts and pointed out that, at the time of the grants, the railroads were literally a kind of highway like canals and toll roads. The grant of a free highway, therefore, granted only the use of the highway and not the vehicles that used the highway. To enjoy its right of free use of the highway, the Government was to employ the services of such

railroads and transportation companies as it desired. Thus, the Court said:

> It is undoubtedly true, that, in practice, railroads, as a general thing, are only operated by the companies that own them, or by those with whom they have permanent arrangements for the purpose. These companies have a practical, if not a legal, monopoly of their use. The great expense of constructing and managing cars and motive power fit to be used on railroads as they have actually developed, the difficulty of strict compliance with the regulations adopted, and the diversified ways in which the companies could make the transportation business uncomfortable to those who might attempt to carry it on, are a most effectual security against any interference with their business as carried on by themselves. And in some of the States where railroads were originally declared public highways, the right of the public to use them has been expressly abrogated—as in Massachusetts, for example, by the act of 1845. See Railroad Laws and Ch. 648.
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> *But the ascertained impracticability of the general and indiscriminate public use of these great thoroughfares does not preclude their use by transportation companies having no interest in the roads themselves. Such companies, in fact, are actually engaged in conducting a vast carrying business on the principal lines of railroad throughout the country.* [Italics added.] (93 U. S. at 449–450.)

And again the Court observed:

> The objection that it would be inconvenient for government to provide locomotives and cars for the performance of its transportation cannot be properly urged. The government can do what it always has done, without experiencing any difficulty—employ the services of the railroad and transportation companies which have provided these accommodations (93 U. S. at 454).[6]

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[6] Appellant in its reply recognized this construction of the land-grant acts, when it stated that the land-grants conferred the "free use by the United States Government of the granted roadbed railroads as a highway for the transportation by the government in its own vehicle or in vehicles procured and employed at its expense" (J. App. 7).

On this analysis, the Supreme Court held that the railroads could charge the Government for the use of locomotives and cars, but the Government was entitled to the free use of the tracks.[7] In our view, the *Lake Superior* decision therefore stands for the proposition that the benefit of the land-grant attaches to the use of the aided railroad; it is not dependent upon the nature of the contractor whom the government hires to make use of the aided railroad for the transportation of government property.

This is precisely the ruling in the second major decision of the Supreme Court construing the land-grant acts so as to require an adjustment of compensation for the transportation of government property, referred to in 10 U. S. 1375. *Chicago, St. P. & M. & Omaha Ry. Co.* v. *United States,* 217 U. S. 180. In the *Omaha* case, the railroad was awarded a contract for the carriage of mail, under a statute which provided the rates therefor, with a proviso that:

> railroad companies, whose railroad was constructed in whole or in part by a grant of land on the condition that the mails should be transported over their road at such price as Congress should by law direct, shall receive only 80 per centum of the compensation authorized by this Act. 217 U. S. at 181.[8]

The railroad involved in the *Omaha* case was not itself an aided railroad, but in the performance of its contract for mail carriage, it used two land-grant railroads, the Great Northern and the Illinois Central, for a portion of the route. (See Map at 217 U. S. at 182.)

The Omaha Railroad was neither a party to the grant nor a successor company, nor had it received any benefits directly

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[7] The railroads recovered 66⅔% of the total transportation charges in the Court of Claims, until Congress by legislation preceding 10 U. S. C. 1375 fixed the rate of 50%. (See S. App. *infra*, 41).

[8] This statute fixed the rate for so called "Congressional rate" lines, and not for the "free highway" or free toll lines. In the case related to the Omaha decision, the Court of Claims suggested that there might be a distinction between the two types of land grant conditions. See *Astoria & Columbia River R. R. Co.* v. *United States*, 41 C. Cls., *infra*, p. 306. We believe the distinction is not well founded nor does appellant urge the distinction. In any event, 10 U. S. C. 1375 expressly refers to both types of land-grant conditions and applies the same rules of construction to both.

or indirectly from the grant. It secured the general use of the aided railroads by an agreement which simply permitted it to run trains on the aided roads, without giving it any right, title or interest of any kind in the roads. Moreover, the Omaha paid the aided railroads a flat monthly rental for the use of their roads, without regard to the land-grant deduction on any of the freight. See Transcript of Record, Supreme Court, October Term, 1909, pp. 7–9.

The Court of Claims ruled the Postmaster had properly deducted 20% from the charges of the Omaha railroad for the portion of the tranportation of the mail over the aided railroads (43 C. Cls. 595, 41 C. Cls. 281), while a Circuit Court in a similar case had held the deduction improper, *United States* v. *Astoria & C. R. R. Co.*, 131 Fed. 1006.* In holding that the Court of Claims was right and the Circuit Court wrong, the Supreme Court rejected the contention made in that case, as appellant urges here (Br. 27), that the land-grant rate for the transportation of mails over the aided roads was limited to a contract for transportation between the United States and the aided road or a company having some property interest in the aided road. The Supreme Court sustained the land-grant deduction from the otherwise applicable rate due the contracting carrier for its transportation of the mails, expressly on the ground that the land-grant imposed a service on any use of the road, as well as upon the aided company. The contracting carrier strenuously urged (217 U. S. at 187), as the Circuit Court had ruled (131 Fed. 1006), that the land-grant rate was only enforceable against the aided railroad, or parties privy to the land-grant, as a covenant running with the land. But the Supreme Court held that, far from being required to collect the land-grant deduction from the company owning the aided road out of its share of the mail revenue, the Government could deduct the land grant from the charges of any user of the road whose charges for transportation services included a charge for transportation over the aided road, regardless of the

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* The Court of Claims decision reported at 43 C. Cls. 595 is only an entry of judgment on the claim of the Omaha railroad, based upon the opinion in the *Astoria & Columbia* case reported at 41 C. Cls. 284.

terms upon which it secured the use of the aided road. As the Court said (217 U. S. at 188):

> We have noticed and commented on one concession of appellant. Another is made, which we quote with its qualifications, as follows: "We do not contend that a land-aided road can be sold, either in whole or in part, so as to aviod its obligations to the government. To this extent we concede that the obligation runs with the railroad aided by land grant, but the act does not say that companies permitted simply to run trains on the road shall suffer reductions. They receive no aid from the grant, and are neither within the terms or the reason of the statute." Of course, the statute did not deal with other companies or with deductions. It would be very strange if it had. It either imposed a service on the companies or on the road as well. If on the companies alone, there would necessarily be exclusion of all others. If on the roads as well, it would comprehend all that used them. If a difference in degree of use or a participation in the use by other companies than the aided ones, had been intended it would have been expressed. The concession as to the effect of the sale or lease of the road is fatal. *Ae we have already said, the obligation is either upon the aided companies, to be enforced by remedies against them, or it is on the property as well, and if on the property, necessarily on it by whatever company or person it is used.* [Italics added.]

We believe the *Omaha* ruling is applicable and controlling here. Since appellant used land-grant railroads to furnish transportation services to the United States, it falls squarely within the rule that the obligation to provide the land-grant rate applies to the use of land-grant railroad by "whatever company or person it is used."

Appellant refers to the fact that the freight forwarder furnishes the complete transportation service, that it is not an agent but a common carrier in its own right, that it secures the

use of the railroads as a shipper, not as a carrier, that it performs certain pick-up and delivery service, and that it is liable for any losses in the course of transportation (Appellant's Brief, p. 29). Far from supporting appellant's position, these features of freight forwarder service lend strong support to the application of the land-grant acts to this service. The freight forwarder, being responsible for the complete transportation service, is responsible for the use of the land-grant railroad and it is, therefore, responsible for the protection of the land-grant rate to the United States. It is immaterial whether appellant secured the use of the railroad for the transportation of government property as an agent of the United States or used the railroads as an independent contractor for the transportation of government property, it used land-grant railroads to perform its service and under the decisions of the Supreme Court, this use was subject to land-grant rates.

Our position is further supported by the fact that the application of land-grant deduction to the charges of freight forwarders who make a business of using the railroad "highway" to furnish the entire transportation is in accordance with the original intent and purpose of the land-grant acts. The freight forwarder is at the very least "a transportation company having no interest in the roads themselves * * * actually engaged in conducting a vast carrying business on the principal lines of railroad throughout the country," described as a typical historical user of railroads. 93 U. S. 450. Freight forwarders like appellant were engaged in the carrying business on other common carriers at the time of the land-grant acts. See *Teal* v. *Sears and Griffith*, 9 Barb. (N. Y.) 317 (1850); *Read* v. *Spaulding*, 30 N. Y. 631 (1860). Appellant here is a creature of railroads being almost 100% owned by three railroads jointly.

Chicago, M., St. P. & P. R. R. Co. v. *Acme Fast Freight*, 336 U. S. 465, relied upon by appellant supports our position rather than that of appellant. That case holds that a freight forwarder is to be treated as any other shipper in its relation to

the railroads which it hires to perform its contracts for transportation. This decision rests upon the principle that shipments carried by a railroad in freight forwarder service should be treated by the railroad as if they had been tendered to the railroad by the owner of the goods. See *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, 341 and *Interstate Commerce Commission* v. *DL&W R. R. Co.*, 220 U. S. 235. Applying this principle here, it follows that the land-grant rate is applicable to the transportation of government property in freight forwarder service because, as appellant has conceded, had the shipments at bar been tendered directly to the railroad, rather than through appellant, the land-grant rates would apply to the rail less-carload rate for the shipment. This is precisely the amount of the deduction which appellee claims here, c. f., *National Carloading Corp.* v. *United States*, 105 C. Cls. 479, 64 F. Supp. 150.

Appellant tries to meet this point by arguing that since the shipment was tendered by it to the railroad as an indistinguishable part of a carload lot, it was impossible to apply the land-grant rates to the government shipments that were part of the carload. (Appellant's Brief, p. 29.) The fact is, however, that the commercial bill of lading on which the shipments moved by railroad identified each item in the carload. See Exhibit C–1, S. App., *infra*, 29–31. The government shipments on the representative bill of lading are fairly distinguishable from the rest of the items. In any case, the special agreement between the appellant, the Department of the Army and the railroads, proves that the land-grant reductions for government shipments in freight forwarder service could be definitely computed. We submit, therefore, that appellant could have secured the land-grant reductions from the railroads it used for the transportation of government property.

But appellant's right to the land-grant reductions are immaterial to this case. The Omaha Railroad likewise secured the use of the land-grant railroad by a contract entirely separate from its contract with the Government to carry the

mails, and it paid the aided railroad a fee therefor without regard to the land-grant rate. The right of the United States to the protection of the land-grant rate for the use of a land-grant railroad by any person who transports its property cannot be made to depend upon whether the user secures the protection of the land-grant rates from the aided company. Obviously, that would, in effect, limit the United States to its remedy against the aided company, which is precisely the limitation rejected by the *Omaha* decision.

3. *Appellant furnishes transportation services that are a part of and directly connected with railroad transportation*

Appellant's contention that the land-grant acts do not apply to it because it is not a railroad is answered by the *Lake Superior* and *Omaha* decisions which held that the land-grant acts apply not only to railroads but to any use of land-grant railroads by any person or company whatever. Appellant's argument that the land-grant acts do not apply to its use of railroads for the transportation of government property are, therefore, without merit. But, additionally, the appellant's contention that its services are different from railroad service is answered by the record in this case. The court below has found that the appellant is a transportation company that operates a service directly connected with the transportation of goods by railroad (J. App. 13). This Court has squarely held that a freight forwarder performs "railroad-like functions" in holding that freight forwarders, like the appellant, owned by railroads, are employers under the Railroad Retirement and Unemployment Compensation Acts. *Universal Carloading Corp.* v. *Railroad Retirement Board,* 84 App. D. C. 188, 189, 172 F. 2d 22 (C. A. D. C.); to the same effect, *Universal Carloading Corp.* v. *Pedrick,* 184 F. 2d 64 (C. A. 2), certiorari denied, 340 U. S. 905.

The differences between a freight forwarder and a railroad, pointed out by appellant and noted above, are immaterial here.

The essential fact is that a freight forwarder makes use of the railroads as a regular part of its business in the performance of contracts for the transportation of government property. A freight forwarder's business depends upon and is directly related to railroad transportation. Essentially, a freight forwarder furnishes railroad carload service for less carload shipments. By assembling numerous less carload shipments from several shippers, it is able to combine them into a carload and secure the use of railroads for the transportation of the carload at railroad carload rates and railroad carload services. It charges its customers the higher railroad less-than-carload rate; it pays the railroad the carload rate and makes its profit on the "spread." *Chicago, etc.* v. *Acme Fast Freight,* 336 U. S. at 467; *Universal Carloading Corp.* v. *Railroad Retirement Board, supra,* 172 F. 2d at 24; *National Carloading Corp.* v. *United States,* 105 C. Cls. 479, *supra; Freight Forwarding Investigation,* 229 I. C. C. 201.

4. *It is wholly reasonable and just to apply the land-grant reduction to appellant's charges*

From what we have just said, it is apparent that the imposition of the land-grant deduction against the charges of a freight forwarder does not work any injustice, even if the freight forwarder pays the full commercial rate to the railroad which hauls the goods, because the freight forwarder pays the railroad a lower rate than net rate to the Government. The freight forwarder's charges to the Government are based on the rail less carload rate, while the freight forwarder delivers carload lots to the railroad and pays a much lower carload rate. Indeed, this appellant has been satisfied to receive from the Government the rail less-carload rate with land-grant deduction, because it, nevertheless, makes a profit on the difference between rail carload and less-carload rates. *National Carloading Corp.* v. *United States, supra.*

5. Settled administrative rulings have held that appellant's services are subject to land-grant statutes

Since 1921, it has been a fixed ruling of the Comptroller General that freight forwarders are subject to land-grant rates. 27 Comp. Dec. 1043, ante, p. 3. These rulings are entitled to "decided weight," *Southern Pacific R. R. Co.* v. *U. S.*, 307 U. S. 393, 400–401. Appellant's contention (Appellant's Brief, pp. 31–33) that the prior administrative rulings have held that freight forwarders are not subject to land-grant rates is in error. Appellant relies upon a ruling of the Attorney General with regard to the application of land-grant rates to express companies, 16 Op. Atty. Gen. 609. This Attorney General's ruling was rendered in 1878 prior to the 1910 decision in the *Omaha* case, that the land-grant acts apply to use of land-grant railroads by any person or company whatever. The ruling, moreover, construed the Act of March 3, 1875, 18 Stat. 453 (10 U. S. C. 1376), which was confined by its terms to payment to any railroad company.[10] The case at bar involves the later act of June 7, 1924 (10 U. S. C. 1376), which provides for reduced rates for the transportation of property of the United States over any land-grant railroad, without restriction to railroads, and expressly refers to the decisions of the Supreme Court construing land-grant acts.

In addition, the earlier ruling with regard to express companies was no longer followed after 1928, when the Railway Express Company came under the ownership of the railroads. 8 Comp. Gen. 484. Appellant is a wholly owned subsidiary of

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[10] "*Transportation without charge by certain land-grant railroads.* No money shall hereafter be paid to any railroad company for the transportation of any property or troops of the United States over any railroad which in whole or in part was constructed by the aid of a grant of public land on the condition that such railroad should be a public highway for the use of the Government of the United States free from toll or other charge, or upon any other conditions for the use of such road, for such transportation, nor shall any allowance be made for the transportation of officers of the Army over any such road when on duty and under orders as military officers of the United States: * * *"

three railroads[11] (J. App. 10). Finally, whatever may have been the ruling with regard to express companies, the Comptroller General has squarely ruled that the transportation of government property over land-grant routes by freight forwarders in general, and appellant in particular, is subject to land-grant rates. 27 Comp. Dec. 1043 (J. App. 35–36).

We submit that the settled administrative interpretation, entitled to decided weight, is that freight forwarder transportation of government property over a land-grant railroad is subject to land-grant rates. We believe we have shown that the land-grant acts are applicable to the transportation of government property over land-grant railroads in the circumstances of this case. The next question to be determined is whether the government has by any contract agreed to waive the benefit of the land-grant reductions from the full commercial rate.

II. The contracts covering the transportation in this case did not except the transportation from the land-grant acts but, on the contrary, by their terms were intended to afford the Government the benefit of the land-grant rates

A. *Exception must be made by express provision and there are no express exceptions in the contracts at bar*

The contracts in the case at bar are embodied in a government bill of lading and the supporting documents (J. App. 29–30). There are no provisions in the contracts excepting the transportation from the land-grant acts. In the absence of any express agreement for special services or other rates, it is settled that carrier cannot charge any more, and the government cannot pay less than the applicable published rates, less the land-grant deductions. *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 256 U. S. 201, 207, *Missouri Pacific R. R. Co.* v. *United States,* 71 C. Cls. 650. In fact, it is conceded in the

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[11] The fact that the railroads owning appellant are not land-grant roads (J. App. 10) is immaterial, since as appellant has conceded (J. App. 25) the land-grant reduced rates would apply to shipments tendered directly to them (J. App. 25).

stipulated facts that the shipments in controversy were *not* covered by any agreement for special services that would provide a consideration to the Government for its waiver of the benefits of the land-grants acts. (J. App. 26.) It is settled that the land-grant acts confer valuable rights upon the Government which cannot be waived without consideration. *Southern Railway Co.* v. *United States,* 322 U. S. at 76, where the Court said:

> The records show that the privilege of obtaining the benefit of rates on land-grant routes is a valuable privilege indeed. We cannot assume that the United States intended to surrender any of those benefits by granting the equalizing carriers more favorable rates than those to which it was lawfully entitled on the land-grant routes, unless the purpose to do so was plainly expressed.
> * * *

The record in this case shows that when the government agreed to waive the land-grant reductions for transportation of government property over land-grant railroads in freight forwarder service, it did so by contracts expressly providing for the waiver of the land-grant rates in return for special services (S. App. *infra,* 35). Moreover, at the time of the agreements for special services with the freight forwarders, the Government reached a contemporaneous agreement with the railroads protecting the land-grant rate for the transportation of Government property in freight forwarder service (S. App. *infra,* 37–38).

B. The contracts in the case at bar, in fact, provide for the application of the land-grant rates

The Court below found—

> By the terms of said bills of lading, the shipments were to be made at the lowest rates available to the Government, unless otherwise indicated on the face thereof (J. App. 12–13).

Appellant's statement that the government bill of lading contains no such provision is in error (Appellant's Brief, p. 16). Condition No. 1 of the bill reads as follows (J. App. 30):

> Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee.

> On presentation to the office indicated on the face hereof of this bill of lading, properly accomplished, *attached to freight voucher prepared on the authorized Government form,* payment will be made to the last carrier, unless otherwise specifically stipulated. [Italics added.]

Appellant certified on the freight voucher that the charges were "not in excess of the lowest net rates available for the government, based on tariffs effective at the date of service" (J. App. 25, ante, p. 2). The lowest net rates available for the government on the basis of applicable published tariffs are the rates for the route, which with land grant reductions, result in the lowest rates. *Southern Railway Co.* v. *United States,* 322 U. S. 72; *Southern Pacific Co.* v. *United States, supra.*[12] The phrase *lowest net rates available to the Government* can have no other meaning, since for all other shippers, the rates are the lowest applicable published tariff rates. *Bowles* v. *Willingham,* 179 F. 2d 257, 259 (C. A. 5); *United States v. Gulf Refining Co.,* 268 U. S. 542, 546; *United States* v. *Strickland Transportation Co.,* 200 F. 2d 234; 204 F. 2d 325 (C. A. 5).

Appellant is bound by the terms of the voucher. *Alcoa S. S. Co.* v. *United States,* 338 U. S. 421, 429, where the Court said:

> To hold petitioner to the terms of the voucher comports with practicalities. The intent of the Government to condition payment upon delivery we think abundantly clear, and the basic question is whether the Government's draftsmanship succeeds in giving unequivocal notice of this stipulation. The bill expressly summons attention to the voucher; the provision on the voucher is unmistakable. An experienced carrier could not have been unfamiliar with the express terms of a document which it uses regularly, a prescribed document upon which every claim against one of its largest customers must be made.

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[12] This rate is a constructed rate, it is not even essential that the property actually move over the route yielding the lowest net rate, it is sufficient that the route producing the lowest net rate is available for the given transportation. 322 U. S. at 76; 307 U. S. at 401.

In addition to the fact of the certification on the voucher, the shipments carried by appellant on government bills of lading. The use of a government bill of lading ordinarily indicates that land-grant rates apply, unless it can be shown that the shipment was not in fact government property moving for a military or naval use. *Pacific Electric Co.* v. *United States*, 71 F. Supp. 987, affirmed, 172 F. 2d 222 (C. A. 9); *Henry H. Cross Co.* v. *United States*, 133 F. 2d 183 (C. A. 7); and see *Northern Pacific Railway Co.* v. *United States*, 330 U. S. 248; *Southern Pacific Co.* v. *Reconstruction Finance Corp.*, 161 F. 2d 76 (C. A. 9).

To the facts of the certification on the voucher, and the use of a government bill of lading must be added the further fact that appellant had been expressly notified by the Comptroller General that its charges were subject to land-grant rates, ante p. 22. Furthermore, as the Court below said in its opinion (J. App. 22):

> * * * Most railroaders well know that east of the Mississippi River there are very few land-grant roads but west of the Mississippi, they are quite numerous and their routes are known and in the competition for business most every railroading company and a freight forwarder knows of them. * * *

It may be added that the District Court's observation that freight forwarders and railroads are competitors for the same business is amply established. The competition was one of the prime reasons for subjecting freight forwarders to regulation. Freight Forwarding Investigation, 229 I. C. C. 201. On this evidence, the Court below found (J. App. 13):

> At the time it issued said bills of lading, plaintiff knew of the existence and nature of land-grant rates, that the land-grant rates are the lowest rates available to the Government and plaintiff had reason to know that the transportation of defendant's property in freight forwarder service over railroads was subject to applicable land-grant rates.

This finding cannot be impeached, for it is not clearly erroneous. Federal Rules of Civil Procedure, Rule 52 (a): *United*

States v. *U. S. Gypsum Co.*, 333 U. S. 364, 394–395; Moore's Fed. Pr. pp. 2610–2611. It is, moreover, sufficient to support the judgment below.

Accordingly, since appellant, a transportation company, had agreed to charge the lowest net rates available for the transportation of property of the United States and used land-grant railroads to transport this Government property, it could only charge the appropriate land-grant rates.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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SUPPLEMENTAL APPENDIX

Exhibit A

Civil Action No. 57–50

NATIONAL CARLOADING CORPORATION *v.* UNITED STATES

B–108622

Shipments Made for Account of Maritime Commission

Carrier's bill No.	G. A. O. reference			Bill of lading		Route order	Origin	Destination	Commodity	Weight (pounds)	Originally paid	Should be		Deductions			Amounts involved on shipments specifically routed
	Voucher number	Date	D/O	Number	Date							Rate	Amount	Amount	From bill number	G. A. O. voucher reference	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1805	397864	8/42	G. F. Allen	MC-65889	4/ 7/42	None	Pittsburgh, Pa.	North Portland, Oreg.	Steel valves	2,434	$59.62	$1.37443	$33.45	$26.18	284	960638-5/45-EJB	
				MC-65890	4/ 8/42	None	do	do	do	1,110	27.20	1.37443	15.26	11.94	284	960638-5/45-EJB	
				MC-65899	4/ 7/42	None	do	do	do	740	18.13	1.37443	10.17	7.96	284	960638-5/45-EJB	
				MC-65929	4/ 6/42	None	do	do	do	924	22.64	1.37443	12.70	9.94	284	960638-5/45-EJB	
				MC-65938	4/ 9/42	None	do	do	do	1,802	44.15	1.37443	24.77	19.38	284	960638-5/45-EJB	
				MC-65953	4/10/42	None	do	do	do	384	9.41	1.37443	5.28	4.13	284	960638-5/45-EJB	
				MC-97309	4/14/42	None	do	do	do	774	18.96	1.37443	10.64	8.32	284	960638-5/45-EJB	
				MC-97337	4/17/42	None	do	do	do	1,043	25.55	1.37443	14.34	11.21	284	960638-5/45-EJB	
				MC-59685	3/17/42	CD-665	Portland, Maine	do	Iron turnbuckles	1,920	54.14	2.82	54.14	13.12	284	960638-5/45-EJB	$13.12
				MC-58162	4/14/42	MC-34	Jeannette, Pa.	do	C. I. Pipe fittings	2,446	64.09	2.62	64.09	22.72	284	960638-5/45-EJB	22.72
				MC-61764	4/14/42	3842	Norwood, Ohio	do	Power pumps and switches	1,238	36.77	2.97	36.77	16.96	284	960638-5/45-EJB	16.96
				MC-61766	4/16/42	3841	do	do	do	1,235	36.68	2.97	36.68	16.92	284	960638-5/45-EJB	16.92
				MC-51373	4/ 4/42	None	Wadsworth, Ohio	do	Iron valves	3,015	73.87	1.36637	41.20	32.67	284	960638-5/45-EJB	
				MC-51378	4/ 6/42	CD-4011	do	do	Brass valves	40	2.88	1.88	1.88	1.00	284	960638-5/45-EJB	1.00
				MC-58791	4/13/42	CD-2380	Philadelphia, Pa	do	Steel valves	2,586	69.05	2.67	69.05	25.83	284	960638-5/45-EJB	25.83
														228.28			
471	25835	6/42	G. F. Allen	MC-25974	1/ 8/42	MC-3803	Brooklyn, N. Y.	Houston, Tex	Bronze screens	490	15.58	3.18	15.58	3.18	3086	2018808-4/45-GFA	3.18
				MC-39219	1/14/42	None	Bridgeport, Conn	do	Valves	92	MC1.91	1.52767	1.53	.38	3086	2018808-4/45-GFA	
				MC-90506	1/21/42	MC-2580	do	do	Iron valves	506	9.66	1.91	9.66	1.93	3086	2018808-4/45-GFA	1.93
				MC-90501	1/20/42	MC-2580	do	do	do	4,216	80.53	1.91	80.53	16.15	3086	2018808-4/45-GFA	16.15
				MC-42843	1/10/42	None	Pittsburgh, Pa.	do	do	735	13.38	1.22857	9.03	4.35	3086	2018808-4/45-GFA	
				MC-47192	1/27/42	None**	Newark, N. J.	do	Oil filters	364	9.54	2.08242	7.58	1.96	3086	2018808-4/45-GFA	
				MC-47195	1/29/42	None**	do	do	do	727	19.05	2.08242	15.13	3.92	3086	2018808-4/45-GFA	
				MC-27491	1/13/42	None**	do	do	do	376	9.90	2.08242	7.87	2.03	3086	2018808-4/45-GFA	
				MC-90424	1/ 3/42	MC-2580	Bridgeport, Conn	do	Brass valves	365	9.75	2.67	9.75	1.94	3086	2018808-4/45-GFA	1.94
				MC-17385	1/26/42	MC-3649	East Orange, N. J.	do	Television instrument parts.	617	23.08	3.74	23.08	4.74	3086	2018808-4/45-GFA	4.74
														40.58			
405	2447784	6/45	G. F. Allen	MC-36905	12/24/41	None	Philadelphia, Pa.	Richmond, Calif.	Steel pipe fittings	188	4.40	1.90287	3.57	.83	3086	2018808-4/45-GFA	
				MC-26424*	12/17/41	MC-4037	Franklin, Pa.	do	Shafts	652	22.36	3.43	22.36	7.42	3086	2018808-4/45-GFA	7.42
				MC-90866	12/17/41	MC-6725	Cleveland, Ohio	do	Iron floor plates	265	5.57	2.10	5.57	1.34	3086	2018808-4/45-GFA	1.34
				MC-21647	12/20/41	MC-2881	Brooklyn, N. Y.	do	Electric switches	788	23.64	3.00	23.64	5.45	3086	2018808-4/45-GFA	5.45
				MC-88729	1/20/42	None	Pittsburgh, Pa.	do	Steel valves	406	8.77	1.35857	5.52	3.25	3086	2018808-4/45-GFA	
				MC-25552	1/20/42	None	do	do	Iron valves	800	17.28	1.35857	10.87	6.41	3086	2018808-4/45-GFA	
				MC-35269	12/30/41	None	do	do	Steel valves	973	21.02	1.35857	13.22	7.80	3086	2018808-4/45-GFA	
				MC-88712	12/11/41	None	do	do	do	640	10.88	1.35781	8.69	2.19	3086	2018808-4/45-GFA	
														34.69			
293	2198816	5/42	G. F. Allen	MC-18808	1/ 9/42	None	Cincinnati, Ohio	North Portland, Oreg.	Smoke pipe	260	9.88	2.04985	5.33	4.55	3086	2018808-4/45-GFA	
				MC-23125	12/30/41	MC-3116	Boston, Mass.	Mobile, Ala.	Bronze signal	501	13.53	2.70	13.53	2.23	3086	2018808-4/45-GFA	2.23
				MC-21646	12/19/41	MC-2880	Brooklyn, N. Y.	New Orleans, La.	Electric switches	788	15.21	1.93	15.21	2.54	3086	2018808-4/45-GFA	2.54
				MC-21645	12/17/41	MC-2880	do	do	do	1,576	30.42	1.93	30.42	5.08	3086	2018808-4/45-GFA	5.08
				MC-20626	12/31/41	MC-7354	New Haven, Conn.	North Portland, Oreg.	Lock sets n. o. i. b. n.	243	8.09	3.33	8.09	2.78	3086	2018808-4/45-GFA	2.78
				MC-25967	12/31/41	MC-3805	Brooklyn, N. Y.	do	Bronze screens	485	23.38	3.48	16.86	12.70	3086	2018808-4/45-GFA	6.20
				MC-23978	12/22/41	MC-3321	Detroit, Mich.	do	Brass valves n. o. i. b. n.	508	10.31	2.03	10.31	1.89	3086	2018808-4/45-GFA	1.89
														31.77			
291	2215074	5/42	G. F. Allen	MC-26418	12/17/41	MC-4032	Franklin, Pa.	Terminal Island, Calif.	Shafts	740	27.05	3.65½	27.05	9.77	3086	2018808-4/45-GFA	9.77
				MC-85429	1/ 2/42	MC-7108	Braddock, Pa.	North Portland, Oreg.	Chain	1,258	27.30	2.17	27.30	7.63	3086	2018808-4/45-GFA	7.63
														17.40			
79	1950055	4/42	G. F. Allen	MC-88802	12/12/41	MC-2580	Bridgeport, Conn	Houston, Tex	Brass valves	94	2.67	MC 2.67	2.67	.53	2716	2018809-4/45-GFA	.53
				MC-88811	12/15/41	MC-2580	do	do	do	23	.61	2.67	.61	6.09	2716	2018809-4/45-GFA	
				MC-25543	12/10/41	None	Pittsburgh, Pa.	do	Iron valves	1,574	30.06	1.91	30.06		2716	2018809-4/45-GFA	6.09
				MC-25539	12/ 9/41	None	do	do	do	480	7.73	1.24378	5.97	1.76	2716	2018809-4/45-GFA	
									do	595	10.53	1.24378	7.40	3.13	2716	2018809-4/45-GFA	
														11.51			
1872	2406027	6/47	G. F. Allen	MC-59243	4/23/42	CD-431	Louisville, Ky.	Eavan, Wash.	Steel valves	132	3.09	2.34	3.09	1.45	2716	2018809-4/45-GFA	1.45
				MC-51399	4/21/42	CD-4012	Wadsworth, Ohio	do	Iron valves	760	18.62	2.45	18.62	8.24	2716	2018809-4/45-GFA	8.24
				MC-61227	4/ 9/42	None	Newark, N. J.	do	Oil filters cartridges	229	10.30	3.50672	8.30	2.00	2716	2018809-4/45-GFA	
				MC-67214	4/ 9/42	NOCD-2163	Detroit, Mich.	do	Soot blower heads, elements and parts.	4,527	149.84	3.31	149.84	42.51	2716	2018809-4/45-GFA	42.51
				MC-64866	4/14/42	CD-1410	Chicago, Ill.	do	Perforated steel sheets								

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				MC-66255	3/20/42	None	Columbus, Ohio	Richmond, Calif.	Iron pipe fittings	2,725	70.31	1.64214	44.75	25.56	2716	2018809-4/45-GFA	1.88
				MC-66026	3/23/42	None	Pittsburgh, Pa.	Terminal Island, Calif.	Steel valves	1,196	29.30	1.48039	17.71	11.59	2716	2018809-4/45-GFA	
				MC-73963	3/30/42	MC-6330	Louisville, Ky.	do	do	663	15.98	2.34	15.98	6.94	2716	2018809-4/45-GFA	6.94
														103.80				
288	2215060	5/42	G. F. Allen	MC-65253	12/16/42	MC-5284	Cleveland, Ohio	do	Iron sheaves	161	5.27	3.14	5.05	2.23	2716	2018809-4/45-GFA	2.02
				MC-19502	12/16/41	MC-2656	Troy, N. Y.	do	Iron valves	9,330	240.25	2.52	236.13	88.92	2716	2018809-4/45-GFA	83.79
				MC-17358	12/16/41	MC-2097	Amesbury, Mass.	do	Brass hardware	1,698	63.68	3.75	63.68	21.64	2716	2018809-4/45-GFA	21.64
														112.79				
658	181083	7/42	G. F. Allen	MC-45305	1/15/42	None	Pittsburgh, Pa.	North Portland, Oreg.	Steel valves	246	5.31	1.32679	3.26	2.05	2716	2018809-4/45-GFA	
				MC-45329	1/19/42	None	do	do	do	316	6.83	1.32679	4.19	2.64	2716	2018809-4/45-GFA	
				MC-45322	1/17/42	None	do	do	do	1,518	32.79	1.32679	20.14	12.65	2716	2018809-4/45-GFA	
				MC-35359	1/14/42	None	do	do	do	642	13.87	1.32679	8.52	5.35	2716	2018809-4/45-GFA	
				MC-45323	1/17/42	None	do	do	do	2,003	44.56	1.32679	27.37	17.19	2716	2018809-4/45-GFA	
				MC-29631	1/13/42	MC-7354	New Haven, Conn.	do	Lock sets	44	3.33	3.33	3.33	1.13	2716	2018809-4/45-GFA	1.13
				MC-29629	1/ 9/42	MC-7354	do	do	do	466	15.52	3.33	15.52	5.27	2716	2018809-4/45-GFA	5.27
				MC-33263	1/20/42	MC-1495	Cleveland, Ohio	Richmond, Calif.	Anchor or chain fittings	5,292	111.13	2.10	111.13	27.58	2716	2018809-4/45-GFA	27.58
				MC-35681	1/15/42	MC-5842	Boston, Mass.	do	Linen hose	160	4.32	2.70	4.32	.47	2716	2018809-4/45-GFA	.47
				MC-45306	1/11/42	None	Pittsburgh, Pa.	do	Steel valves	420	9.07	1.36534	5.73	3.34	2716	2018809-4/45-GFA	
				MC-45316	1/16/42	None	do	do	do	1,798	38.84	1.36534	24.55	14.29	2716	2018809-4/45-GFA	
				MC-45338	1/20/42	None	do	do	do	1,136	24.54	1.36534	15.51	9.03	2716	2018809-4/45-GFA	
				MC-45328	1/19/42	None	do	do	do	384	8.29	1.36534	5.24	3.05	2716	2018809-4/45-GFA	
				MC-35293	2/10/42	None	do	do	do	744	16.07	1.36534	10.16	5.91	2716	2018809-4/45-GFA	
				MC-35350	1/13/42	None	do	do	do	908	19.61	1.36534	12.40	7.21	2716	2018809-4/45-GFA	
				MC-35355	1/14/42	None	do	do	do	660	14.26	1.36534	9.01	5.25	2716	2018809-4/45-GFA	
				MC-38023	1/16/42	MC-3322	Detroit, Mich.	do	Brass valves	237	4.81	2.03	4.81	.75	2716	2018809-4/45-GFA	.75
				MC-33902	12/19/41	MC-7193	Cincinnati, Ohio	do	Iron or steel n. o. i. b. n.	560	15.40	2.75	15.40	3.38	2716	2018809-4/45-GFA	3.38
				MC-43394	1/ 9/42	None	Philadelphia, Pa.	do	Steel pipe fittings	288	6.74	1.90422	5.48	1.26	2716	2018809-4/45-GFA	
				MC-42848	1/31/42	None	Pittsburgh, Pa.	Houston, Tex.	Iron valves	490	7.89	1.21433	5.95	1.94	2716	2018809-4/45-GFA	
														129.74				
1451	Papers not yet assembled.																	
1175-B	442468	8/42	G. F. Allen	MC-36009	1/ 8/42	MC-7/14/41	Cincinnati, Ohio	Alhambra, Calif.	Steel valve parts	5,325	109.70	2.06	109.70	41.69	15677	960188-11/44-GFA	41.69
1148	341962	8/42	G. F. Allen	MC-81126	3/ 4/42	None	Brooklyn, N. Y.	San Francisco, Calif.	Pillows	1,456	71.64	4.51529	65.74	5.90	15677	960188-11/44-GFA	
				MC-59343	3/11/42	None	Pittsburgh, Pa.	North Portland, Oreg.	Steel valves	2,292	52.95	1.33243	50.54	22.41	15677	960188-11/44-GFA	
				MC-53317	2/28/42	MC-8030	Philadelphia, Pa.	do	Bronze valves	1,445	44.94	3.11	44.94	13.24	15677	960188-11/44-GFA	13.24
				MC-25031	1/ 7/42	MC-3523	Newark, N. J.	do	Electrical appliances, etc.	1,230	60.27	4.90	60.27	19.49	15677	960188-11/44-GFA	19.49
										98	3.31	3.38	3.31					
														61.04				
1998-A	496708	9/42	G. F. Allen	MC-55018	4/ 6/42	CD-3/11/42	Cincinnati, Ohio	Alhambra, Calif.	Valve parts	8,931	208.99	2.34	208.99	88.00	15677	960188-11/44-GFA	88.00
1863	2344902	6/42	G. F. Allen	MC-78337	4/17/42	None	Washington, D. C.	Portland, Oreg.	Tabulating cards	11,580	354.35	1.91475	221.73	122.62	10147	88315-7/44-GFA	
				MC-61610	3/27/42	CD-2820	St Louis, Mo.	North Portland, Oreg.	Blower parts	2,168	62.44	2.88	62.44	23.06	10147	88315-7/44-GFA	23.06
				MC-58760	3/ 6/42	MC-8030	Philadelphia, Pa.	do	Steel valves	3,448	86.89	2.52	86.89	32.51	10147	88315-7/44-GFA	32.51
				MC-62569	4/ 8/42	None	Cleveland, Ohio	do	Iron vises	1,735	48.58	1.58542	27.51	21.07	10147	88315-7/44-GFA	
				MC-41519	3/28/42	MC-7448	Dayton, Ohio	do	Power pumps	2,430	72.17	2.97	72.17	32.11	10147	88315-7/44-GFA	32.11
				MC-85696	3/18/42	MC-5841	Boston, Mass.	do	Linen hose	242	9.63	3.98	9.63	3.59	10147	88315-7/44-GFA	3.59
				MC-50348	4/ 1/42	CD-835	Corsopolis, Pa.	do	Steel valves	7,656	187.57	2.45	187.57	79.89	10147	88315-7/44-GFA	79.89
				MC-55146	3/24/42	CD-221	Lanspe, Pa.	Richmond, Calif.	Pipe fittings	437	12.06	2.76	12.06	3.73	10147	88315-7/44-GFA	3.73
				MC-60143	3/24/42	MC-1746	Barberton, Ohio	do	do	4,040	103.02	2.55	103.02	34.39	10147	88315-7/44-GFA	34.39
				MC-19448	3/19/42	CD-632	Indiana Harbor, Ind.	do	Pipe	7,225	187.13	2.59	187.13	83.11	10147	88315-7/44-GFA	83.11
				MC-67783	3/27/42	CD-547	Grand Haven, Mich.	do	Gear assemblies	2,925	122.27	4.18	122.27	50.15	10147	88315-7/44-GFA	50.15
				MC-66044	3/26/42	None	Pittsburgh, Pa.	do	Steel valves	450	11.03	1.44816	6.52	4.51	10147	88315-7/44-GFA	
														590.74				
287	2192975	5/42	G. F. Allen	MC-35354	1/12/42	None	do	North Portland, Oreg.	do	1,152	24.88	1.30225	15.00	9.88	10147	88315-8/44-GFA	
				MC-35312	1/ 7/42	None	do	do	do	1,234	26.65	1.30225	16.07	10.58	10147	88315-8/44-GFA	
				MC-35294	1/ 5/42	None	do	do	do	875	18.90	1.30225	11.39	7.51	10147	88315-8/44-GFA	
				MC-35283	1/ 2/42	None	do	do	do	2,724	58.84	1.30225	35.47	23.37	10147	88315-8/44-GFA	
				MC-33915	1/ 2/42	MC-7192	Cincinnati, Ohio	do	Iron or steel	2,240	61.60	2.75	61.60	28.66	10147	88315-8/44-GFA	28.66
				MC-37809	1/ 9/42	MC-3432	Youngstown, Ohio	do	Steel doors and parts	16,395	493.49	3.01	493.49	203.61	10147	88315-8/44-GFA	203.61
				MC-37802	1/ 6/42	MC-3432	do	do	do	4,075	122.66	3.01	122.66	50.61	10147	88315-8/44-GFA	50.61
				MC-37797	1/ 2/42	MC-3432	do	do	do	11,930	359.09	3.01	359.09	148.16	10147	88315-8/44-GFA	148.16
														482.38				
82	2271766	5/42	G. F. Allen	MC-88724	12/18/41	None	Pittsburgh, Pa.	do	Steel valves	1,194	27.94	1.29589	15.47	12.47	10147	88315-8/44-GFA	
				MC-88727	12/19/41	None	do	do	do	1,048	22.64	1.29589	13.58	9.06	10147	88315-8/44-GFA	
				MC-88710	12/19/41	None	do	do	do	636	14.88	1.29589	8.24	6.64	10147	88315-8/44-GFA	
				MC-87121	12/ 9/41	2967	Richmond, Va.	do	Tanks	4,635	172.42	3.72	172.42	21.83	10147	88315-8/44-GFA	21.83
														50.00				

See footnotes at end of table.

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Shipments Made for Account of Maritime Commission—Continued

Carrier's bill No.	G. A. O. reference			Bill of lading		Route order	Origin	Destination	Commodity	Weight (pounds)	Originally paid	Should be		Deductions			Amounts involved on shipments specifically named
	Voucher number	Date	D/O	Number	Date							Rate	Amount	Amount	From bill number	G. A. O. voucher reference	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
85	2271767	5/42	G. F. Allen	MC-18556	12/15/41	MC-2677	Syracuse, N. Y.	Houston, Tex.	Floodlights	200	$10.24	$5.15	$10.24				
									Lamp lenses	30	70	2.47	70	80.50	10147	55313-5/44-GFA	80.50
				MC-17300	12/16/41	MC-2101	Amesbury, Mass.	North Portland, Oreg.	Brass hardware	1,712	64.42	3.78	64.80	56.51	10147	55313-5/44-GFA	56.51
				MC-26165	10/ 7/41	None	Pittsburgh, Pa.	do	Steel valves	1,033	24.91	1.325[illegible]	13.00	10.91	10147	55313-5/44-GFA	
				MC-17378	12/19/41	MC-8649	East Orange, N. J.	Houston, Tex.	Television instrument parts	600	22.60	3.78	22.68	4.94	10147	55313-5/44-GFA	4.94
				MC-27481	12/24/41	None	Newark, N. J.	do	Filters	361	6.08	2.32738	6.80	.51	10147	55313-5/44-GFA	
				MC-35077	12/16/41	MC-7114	Hillsgrove, R. I.	do	Iron unions	354	7.61	2.13	7.61	2.00	10147	55313-5/44-GFA	2.00
				MC-35398	12/22/41	MC-4334	Philadelphia, Pa.	do	Bronze valves	330	5.00	2.58	5.00	1.53	10147	55313-5/44-GFA	1.53
				MC-24557	12/17/41	MC-3432	Youngstown, Ohio	North Portland, Oreg.	Steel doors and parts	8,380	252.24	3.01	252.24	101.35	10147	55313-5/44-GFA	101.35
				MC-37397	12/12/41	MC-4336	Philadelphia, Pa.	do	Bronze valves	668	16.90	2.79	16.90	4.91	10147	55313-5/44-GFA	4.91
														174.91			
2651	168929	7/42	G. F. Allen	MC-100300	5/20/42	MC-2580	Bridgeport, Conn.	Houston, Tex.	Iron valves	155	3.13	1.32703	2.30	.77	10024	15A3917-5/44-GFA	
				MC-100306	5/20/42	MC-2580	do	do	do	620	12.52	1.32703	9.40	3.00	10024	15A3917-5/44-GFA	.77
				MC-100403	5/29/42	MC-2580	do	do	do	222	4.48	1.32703	3.30	1.00	10024	15A3917-5/44-GFA	
														4.80			
531	64204	7/42	G. F. Allen	MC-42241	1/ 7/42	MC-4491	Grand Haven, Mich.	Terminal Island, Calif.	Gear assemblies	1,755	77.37	3.47	60.90	+ 16.47	01061	400/0302-10/43-GFA	
				MC-83631	12/30/41	MC-4491	do	do	do	383	20.33	3.47	21.30	+ 3.03	01061	400/0302-10/43-GFA	
				MC-42240	1/ 6/42	MC-4491	do	do	do	2,340	101.32	3.38	79.00	+ 22.32	01061	400/0302-10/43-GFA	
														43.82			
296	2215075	5/42	G. F. Allen	MC-24548	11/22/41	MC-3428	Youngstown, Ohio	do	Steel doors and parts	4,405	143.41	2.90	124.40	+ 11.01	2231	1821333-3/43-GFA	
				MC-24552	12/ 9/41	MC-3428	do	do	do	8,840	283.97	3.14	277.20	117.80	2231	1821333-3/43-GFA	106.16
														128.81			
1097	344162	8/42	G. F. Allen	MC-33303	2/19/42	MC-6786	Philadelphia, Pa.	do	Bronze valves	700	20.20	2.883	20.20	4.24	2231	1821333-3/43-GFA	4.24
				MC-45889	2/13/42	None	Bridgeport, Conn.	Richmond, Calif.	Valves	108	3.73	1.029003	1.70	1.97	2231	1821333-3/43-GFA	
				MC-45465	2/13/42	MC-6358	New York, N. Y.	do	Iron hooks	123	3.19	2.39	3.19	.92	2231	1821333-3/43-GFA	.92
				MC-30928	2/17/42	MC-5408	Louisville, Ky.	do	Steel valves	119	2.63	2.21	2.63	1.18	2231	1821333-3/43-GFA	1.18
				MC-92605	2/ 9/42	MC-7721	Charlotte, N. C.	do	Steel ladders	1,345	55.55	4.13	55.55	21.74	2231	1821333-3/43-GFA	21.74
				MC-41300	2/13/42	MC-7449	Dayton, Ohio	do	Pumps and parts	580	16.52	2.80	16.52	7.14	2231	1821333-3/43-GFA	7.14
				MC-43463	1/27/42	None	Philadelphia, Pa.	do	Pipefittings	672	15.72	1.39914	12.79	2.93	2231	1821333-3/43-GFA	
				MC-47895	1/22/42	None	New Britain, Conn.	do	Iron hinges and bolts	80	3.20	1.00287	1.80	1.34	2231	1821333-3/43-GFA	
				MC-37885	1/23/42	MC-7746	Barberton, Ohio	do	Iron valves	490	10.58	2.16	10.58	3.97	2231	1821333-3/43-GFA	3.97
				MC-47818	1/27/42	3689	Cincinnati, Ohio	do	Stovepipe	1,220	30.30	2.31	28.18	4.37	2231	1821333-3/43-GFA	4.37
				MC-91617	1/31/42	7721	Charlotte, N. C.	do	Steel ladders	1,345	55.68	4.14	55.68	21.87	2231	1821333-3/43-GFA	21.87
				MC-36288	2/ 4/42	MC-6358	New York, N. Y.	do	Iron hooks and staffs	49	2.30	2.30M	2.30	.74	2231	1821333-3/43-GFA	.74
				MC-45536	1/23/42	MC-7529	Wadsworth, Ohio	do	Iron valves	305	6.50	2.16	6.50	2.43	2231	1821333-3/43-GFA	2.43
				MC-40952	1/ 6/42	MC-6358	New York, N. Y.	do	Iron hooks and staffs	48	2.30	2.30	2.30	.74	2231	1821333-3/43-GFA	.74
				MC-45396	1/30/42	None	Pittsburgh, Pa.	do	Steel valves	1,703	36.78	1.33737	23.14	13.64	2231	1821333-3/43-GFA	
				MC-45880	2/ 9/42	None	Bridgeport, Conn.	North Portland, Oreg.	Valves	165	6.12	1.38813	2.02	3.30	2231	1821333-3/43-GFA	
				MC-45877	2/ 4/42	None	do	do	do	264	9.79	1.38813	4.10	5.00	2231	1821333-3/43-GFA	
				MC-45895	2/12/42	None	do	do	do	108	4.01	1.38813	1.72	2.20	2231	1821333-3/43-GFA	
				MC-45910	2/14/42	None	do	do	do	255	9.46	1.38813	4.05	5.41	2231	1821333-3/43-GFA	
				MC-36915	1/ 3/42	None	Philadelphia, Pa.	do	Pipefittings	800	22.70	1.83893	15.99	6.71	2231	1821333-3/43-GFA	
				MC-47821	2/12/42	2533	Cincinnati, Ohio	do	Stovepipe	400	10.00	2.50	10.00	1.81	2231	1821333-3/43-GFA	1.81
				MC-91829	2/ 5/42	MC-7555	Beaver Falls, Pa.	do	Steel bars	2,543	55.18	2.17	55.18	13.33	2231	1821333-3/43-GFA	13.33
				MC-29430	2/20/42	MC-4803	York, Pa.	do	Track trolleys	1,855	66.22	2.73	47.91	19.79	2231	1821333-3/43-GFA	1.45
				MC-30340	3/11/42	None	Pittsburgh, Pa.	do	Steel valves	1,080	24.95	2.302200	14.27	10.68	2231	1821333-3/43-GFA	
				MC-30936	3/19/42	MC-5407	Louisville, Ky.	do	do	52	2.34	2.34	2.34	1.10	2231	1821333-3/43-GFA	1.10
				MC-91798	2/17/42	MC-6786	Philadelphia, Pa.	Terminal Island, Calif.	Bronze valves	1,225	35.35	2.885	35.35	7.42	2231	1821333-3/43-GFA	7.42
				MC-91791	1/29/42	MC-6786	do	do	do	595	17.17	2.885	17.17	3.00	2231	1821333-3/43-GFA	3.00
														172.68			
407	2417304	6/42	G. F. Allen	MC-27509	12/23/41	MC-4265	New York, N. Y.	Richmond, Calif.	Cork ring buoys	1,404	67.39	4.80	67.39	19.88	2251	1821353-3/45-GFA	19.88
84	2080296	5/42	G. F. Allen	MC-90864	12/17/41	MC-6724	Cleveland, Ohio	North Portland, Oreg.	Iron floor plates	470	9.87	2.10	9.87	2.84	2251	1821353-3/45-GFA	2.84
				MC-85419	12/15/41	MC-7108	Braddock, Pa.	do	Chain	530	11.28	2.17	11.28	2.98	2251	1821353-3/45-GFA	2.98
				MC-91781	12/12/41	MC-6790	Philadelphia, Pa.	do	Valves, bronze	528	14.73	2.79	14.73	3.15	2251	1821353-3/45-GFA	3.15
				MC-88897	12/16/41	MC-2660	Troy, N. Y.	do	Iron valves	3,000	71.10	2.37	71.10	24.43	2251	1821353-3/45-GFA	24.43
				MC-88734	12/23/41	None	Pittsburgh, Pa.	do	Steel valves	620	13.50	1.33802	8.42	5.17	2251	1821353-3/45-GFA	
				MC-88715	12/12/41	None	do	do	do	754	17.64	1.33802	10.09	7.55	2251	1821353-3/45-GFA	
				MC-88722	12/17/41	None	do	do	do	288	6.76	1.33802	3.85	2.89	2251	1821353-3/45-GFA	
														46.72			

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3762	898286	11/42	G. F. Allen	MC-145510	7/ 2/42	CD-9802	Syracuse, N. Y.	Houston, Tex.	Conduit fittings, iron	3,506	65.91	1.48517	52.07	13.84	284	960638-5/46-EJB	(2)
3416	407161	8/42	G. F. Allen	MC-120441	6/27/42	CD-7555	Brooklyn, N. Y.	do	Tel. conn. boxes	365	14.45	3.15497	11.52	2.93	3388	2018818-4/45-GFA	(2)
				MC-119429	6/20/42	CD-7265	do	do	do	1,095	43.36	3.15497	34.55	8.81	3388	2018818-4/45-GFA	(2)
				MC-120403	6/19/42	CD-7555	do	do	do	365	14.45	3.15497	11.52	2.93	3388	2018818-4/45-GFA	(2)
				MC-120422	6/20/42	CD-7555	do	do	do	360	14.26	3.15497	11.36	2.90	3388	2018818-4/45-GFA	(2)
				MC-125625	6/25/42	MC-2580	Bridgeport, Conn	do	Iron valves	46	2.02	1.61850	1.62	.40	3388	2018818-4/45-GFA	(2)
				MC-100510	6/18/42	MC-2580	do	do	do	390	7.88	1.61850	6.31	1.57	3388	2018818-4/45-GFA	(2)
				MC-125632	6/25/42	MC-2580	do	do	do	465	9.39	1.61850	7.53	1.86	3388	2018818-4/45-GFA	(2)
				MC-100524	6/23/42	MC-2580	do	do	do	244	4.93	1.61850	3.95	.98	3388	2018818-4/45-GFA	(2)
				MC-100530	6/23/42	MC-2580	do	do	do	377	7.62	1.61850	6.10	1.52	3388	2018818-4/45-GFA	(2)
				MC-100545	6/24/42	MC-2580	do	do	do	325	6.57	1.61850	5.26	1.31	3388	2018818-4/45-GFA	(2)
														25.21			
4742	721792	10/42	G. F. Allen	MC-120365	6/ 6/42	CD-7555	Brooklyn, N. Y.	do	Tel. conn. boxes	365	12.30	2.68220	9.79	2.51	3388	2018818-4/45-GFA	(2)
404	2417305	6/42	G. F. Allen	MC-35262	12/29/41	None	Pittsburgh, Pa.	Richmond, Calif.	Steel valves	467	10.09	1.35857	6.34	3.75	2115	1821354-3/45-GFA	
				MC-22246	12/17/41	MC-3023	Youngstown, Ohio	do	Steel plates	22,625	484.18	1.27	287.34	185.67	2115	1821354-3/45-GFA	(4) 11.17
				MC-36916	1/ 5/42	None	Philadelphia, Pa	do	Pipe fittings	480	11.23	1.90287	9.13	2.10	2115	1821354-3/45-GFA	
				MC-85191	2/ 4/42	MC-6299	New York, N. Y.	do	Life preservers	2,940	141.12	4.80	141.12	25.86	2115	1821354-3/45-GFA	25.86
				MC-25558	12/30/41	None	Pittsburgh, Pa.	do	Iron valves	980	21.17	1.35857	13.31	7.86	2115	1821354-3/45-GFA	
														225.24			
1110	341963	8/42	G. F. Allen	MC-91830	2/ 4/42	MC-7556	Beaver Falls, Pa.	do	Steel bars	1,424	35.17	2.47	35.17	12.19	2050	1821352-3/45-GFA	12.19
				MC-31763	12/ 9/41	None	Bridgeport, Conn.	North Portland, Oreg	Brass chain	162	5.39	2.19317	3.55	1.84	2050	1821352-3/45-GFA	
				MC-42851	1/31/42	None	Pittsburgh, Pa.	Richmond, Calif.	Iron valves	980	21.17	1.35857	13.31	7.86	2050	1821352-3/45-GFA	
				MC-49516	2/ 2/42	None	do	do	Steel valves	492	10.63	1.35857	6.68	3.95	2050	1821352-3/45-GFA	
				MC-35349	1/13/42	None	do	do	do	1,146	24.75	1.35857	15.57	9.18	2050	1821352-3/45-GFA	
				MC-49529	2/ 4/42	None	do	do	do	788	17.02	1.35857	10.71	6.31	2050	1821352-3/45-GFA	
				MC-54537	2/18/42	None	do	do	do	403	9.31	1.35857	5.48	3.83	2050	1821352-3/45-GFA	
				MC-54536	2/18/42	None	do	do	do	608	14.04	1.35857	8.26	5.78	2050	1821352-3/45-GFA	
				MC-54523	2/17/42	None	do	do	do	1,508	34.83	1.35857	20.49	14.34	2050	1821352-3/45-GFA	
				MC-54470	2/23/42	None	do	do	do	1,500	34.65	1.35857	20.38	14.27	2050	1821352-3/45-GFA	
				MC-54540	2/18/42	None	do	do	do	484	11.18	1.35857	6.58	4.60	2050	1821352-3/45-GFA	
				MC-54466	2/20/42	None	do	do	do	2,044	47.22	1.35857	27.77	19.45	2050	1821352-3/45-GFA	
				MC-54548	2/20/42	None	do	do	do	310	7.16	1.35857	4.21	2.95	2050	1821352-3/45-GFA	
				MC-54545	2/19/42	None	do	do	do	754	17.42	1.35857	10.24	7.18	2050	1821352-3/45-GFA	
				MC-59290	2/28/42	None	do	do	do	1,502	34.70	1.35857	20.41	14.29	2050	1821352-3/45-GFA	
				MC-85687	2/16/42	MC-5841	Boston, Mass.	North Portland, Oreg.	Linen hose	240	9.00	3.75	9.00	3.35	2050	1821352-3/45-GFA	3.35
				MC-51326	3/16/42	MC-7528	Wadsworth, Ohio	do	Brass valves	110	2.99	2.72	2.99	.99	2050	1821352-3/45-GFA	.99
				MC-43853	2/28/42	CD-690	Braddock, Pa.	do	Chain	2,952	72.91	2.47	72.91	26.21	2050	1821352-3/45-GFA	26.21
				MC-43844	2/23/42	MC-7108	do	do	do	1,380	34.09	2.47	34.09	12.26	2050	1821352-3/45-GFA	12.26
				MC-57588	2/28/42	MC-4036	Franklin, Pa.	do	Shafts	1,505	53.28	3.54	53.28	19.78	2050	1821352-3/45-GFA	19.78
				MC-25035	1/17/42	MC-3523	Newark, N. J.	do	Electric appliances	1,989	95.28	(4.90)	95.28	29.71	2050	1821352-3/45-GFA	29.71
				MC-45607	1/24/42	MC-3523	do	do	do	1,326	63.51	(3.38)	63.51	19.80	2050	1821352-3/45-GFA	19.80
				MC-45608	1/24/42	MC-3523	do	do	do	1,326	63.51	(3.38)	63.51	19.80	2050	1821352-3/45-GFA	19.80
				MC-25026	12/20/41	MC-3523	do	do	do	2,061	98.80	(3.38)	98.80	30.86	2050	1821352-3/45-GFA	30.86
				MC-25032	1/10/42	MC-3523	do	do	do	1,989	95.28	(3.38)	95.28	29.71	2050	1821352-3/45-GFA	29.71
				MC-45385	1/22/42	None	Pittsburgh, Pa.	do	Steel valves	986	21.30	1.32104	12.78	8.52	2050	1821352-3/45-GFA	
				MC-35289	1/ 3/42	None	do	do	do	1,145	24.73	1.32104	14.84	9.89	2050	1821352-3/45-GFA	
				MC-50724	2/16/42	None	Akron, Ohio	Richmond, Calif.	Rubber hose	1,263	39.15	2.20464	27.84	11.31	2050	1821352-3/45-GFA	
				MC-50725	2/21/42	None	do	do	do	2,444	75.76	2.20464	53.88	21.88	2050	1821352-3/45-GFA	
				MC-26434	2/20/42	MC-4037	Franklin, Pa.	do	Shafts	300	10.62	3.54	10.62	3.74	2050	1821352-3/45-GFA	3.74
				MC-85690	2/16/42	MC-5842	Boston, Mass.	do	Linen hose	160	4.48	2.80	4.48	.63	2050	1821352-3/45-GFA	.63
				MC-52617	2/20/42	MC-7721	Charlotte, N. C.	do	Steel ladders	807	35.35	4.38	35.35	15.07	2050	1821352-3/45-GFA	15.07
				MC-91797	2/ 9/42	MC-6791	Philadelphia, Pa.	do	Bronze valves	170	4.42	2.60	4.42	.63	2050	1821352-3/45-GFA	.63
				MC-91800	2/25/42	MC-6791	do	do	do	525	13.65	2.60	13.65	1.94	2050	1821352-3/45-GFA	1.94
				MC-43842	2/23/42	MC-7109	Braddock, Pa.	do	Chain	1,525	37.67	2.47	37.67	12.85	2050	1821352-3/45-GFA	12.85
				MC-37756	2/28/42	MC-5158	Providence, R. I.	North Portland, Oreg.	Steel valves	535	13.48	2.52	13.48	4.96	2050	1821352-3/45-GFA	4.96
				MC-58853	2/24/42	None	Indian Orchard, Mass.	do	Iron valves	60	2.52	1.58092	1.58	.94	2050	1821352-3/45-GFA	
														412.85			
804	168920	7/42	G. F. Allen	MC-48423	2/13/42	MC-7780	Cleveland, Ohio	do	Stanchions	10,695	267.38	2.50	267.38	47.55	2050	1821352-3/45-GFA	47.55
				MC-25828	2/ 5/42	MC-3841	Norwood, Ohio	do	Pumps and motors	2,492	66.04	2.65	66.04	10.96	2050	1821352-3/45-GFA	10.96
				MC-49566	2/ 9/42	None	Pittsburgh, Pa.	do	Steel valves	1,252	27.04	1.32679	16.61	10.43	2050	1821352-3/45-GFA	
				MC-49510	1/31/42	None	do	do	do	320	6.91	1.32679	4.25	2.66	2050	1821352-3/45-GFA	
				MC-39218	1/14/42	None	Bridgeport, Conn	do	Valves	148	5.85	2.76908	4.10	1.75	2050	1821352-3/45-GFA	
				MC-39212	1/13/42	None	do	do	do	69	3.95	2.76908	2.77	1.18	2050	1821352-3/45-GFA	
				MC-54791	2/17/42	None	Newark, N. J.	Houston, Tex.	Oil filters	1,103	28.90	2.50479	27.63	1.27	2050	1821352-3/45-GFA	
				MC-54799	2/20/42	None	do	do	do	710	18.60	2.50479	17.78	.82	2050	1821352-3/45-GFA	
				MC-47203	2/ 9/42	None	do	do	do	375	9.83	2.50479	9.39	.44	2050	1821352-3/45-GFA	
				MC-47199	2/ 2/42	None	do	do	do	862	22.58	2.50479	21.59	.99	2050	1821352-3/45-GFA	
				MC-54792	2/17/42	None	do	do	do	282	7.39	2.50479	7.06	.33	2050	1821352-3/45-GFA	
														78.38			

See footnotes at end of table.

280164—53 (Face p. 28) No. 2

Exhibit A

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Shipments Made for Account of Maritime Commission—Continued

Carrier's bill No.	G. A. O. reference			Bill of lading		Route order	Origin	Destination	Commodity	Weight (pounds)	Originally paid	Should be		Deductions			Amounts involved on shipments specifically routed
	Voucher number	Date	D/O	Number	Date							Rate	Amount	Amount	From bill number	G. A. O. voucher reference	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
84–A	319650	8/42	G. F. Allen	MC–88839	12/22/41	MC–2580	Bridgeport, Conn	Long Filters	Brass valves	308	$8.22	$2.67	$8.22	$1.56	2050	1821352–3/45–GFA	$1.56
				MC–90364	12/22/41	MC–2580	do	do	do	119	3.18	2.67	3.18	.61	2050	1821352–3/45–GFA	.61
				MC–88831	12/8/41	MC–2580	do	do	Iron valves	684	14.30	2.09	14.30	3.72	2050	1821352–3/45–GFA	3.72
														5.89			
1481	351575	8/42	G. F. Allen	MC–81273	2/25/42	None	Brooklyn, N. Y	do	Brooms, etc	1,582	41.45	1.9816	31.35	10.10	2050	1821352–3/45–GFA	
				MC–42860	3/19/42	None	Pittsburgh, Pa	do	Iron valves	980	16.76	1.3208	12.94	3.82	2050	1821352–3/45–GFA	
														13.92			
292	2215061	5/42	G. F. Allen	MC–24544	11/11/41	MC–3428	Youngstown, Ohio	Terminal Island, Calif	Steel doors	9,014	291.60	*2.99	269.52	22.08	2050	1821352–3/45–GFA	
				MC–19477	11/21/41	MC–2656	Troy, N. Y	do	Iron valves	11,552	299.77	*2.37	273.78	25.99	2050	1821352–3/45–GFA	
				MC–17340	11/ 6/41	MC–2109	Amesbury, Mass	do	Brass hardware	4,004	150.15	*3.60	144.14	6.01	2050	1821352–3/45–GFA	
				MC–25797	11/ 6/41	MC–3837	Norwood, Ohio	do	Pumps and motors	250	6.63	2.65	6.63	2.55	2050	1821352–3/45–GFA	2.55
														56.63			
3134	369908	8/42	G. F. Allen	MC–120384	6/ 9/42	CD–7555	Brooklyn, N. Y	Houston, Tex	Tel. conn. boxes	365	14.45	2.20943	8.06	6.39	14803	972486–1/45–GFA	(3)
336	2234885	5/42	G. F. Allen	MC–35267	12/30/41	None	Pittsburgh, Pa	North Portland, Oreg	Steel valves	966	20.87	1.32679	12.81	8.06	10855	196984–1/46–EJB	
				MC–35263	12/12/41	None	do	do	do	384	8.29	1.32679	5.09	3.20	10855	196984–1/46–EJB	
				MC–90938	12/24/41	None	Philadelphia, Pa	do	Pipe fittings	380	8.89	1.70786	6.49	2.40	10855	196984–1/46–EJB	
				MC–88747	12/26/41	None	Pittsburgh, Pa	do	Steel valves	812	17.54	1.32679	10.77	6.77	10855	196984–1/46–EJB	
				MC–88746	12/24/41	None	do	do	do	761	16.44	1.32679	10.09	6.35	10855	196984–1/46–EJB	
														25.78			
774	Papers not yet assembled																
365	2414057	6/42	G. F. Allen	MC–88704	12/ 9/41	None	do	do	do	635	13.71	1.30778	8.30	5.41	1873	1823349–3/45–GFA	
				MC–25808	12/27/41	None	Norwood, Ohio	do	Power pumps	1,031	27.32	1.52342	15.71	11.61	1873	1823349–3/45–GFA	
				MC–33913	12/30/41	MC–7192	Cincinnati, Ohio	do	Iron or steel	1,960	53.90	2.75	53.90	13.38	1873	1823349–3/45–GFA	13.38
				MC–35080	12/16/41	MC–7116	Hillsgrove, R. I	do	Iron unions	440	10.43	2.37	10.43	2.12	18737	1823349–3/45–GFA	2.12
				MC–83260	12/27/41	MC–1494	Cleveland, Ohio	do	Chain fittings	2,352	49.34	2.10	49.34	13.25	1873	1823349–3/45–GFA	13.25
														45.77			
583	2432426	6/42	G. F. Allen	MC–86992	1/30/42	MC–2880	Brooklyn, N. Y	New Orleans, La	Electric switches	4,728	91.25	1.93	91.25	15.33	1873	1823349–3/45–GFA	15.33
1563–A	351581	8/42	G. F. Allen	MC–42863	3/31/42	None	Pittsburgh, Pa	Houston, Tex	Iron valves	1,470	25.14	1.3215	19.43	5.71	1873	1823349–3/45–GFA	
				MC–61221	4/ 9/42	None	Newark, N. J	do	Oil filters	1,099	30.55	2.2124	24.31	6.24	1873	1823349–3/45–GFA	
														11.95			
775–B	2405514	6/42	G. F. Allen	MC–49571	7/ 9/42	None	Pittsburgh, Pa	Los Angeles, Calif	Steel valves	640	14.78	1.40563	4.93	5.78	1873	1823349–3/45–GFA	(3)
289	2192974	5/42	G. F. Allen	MC–35279	12/31/41	None	do	Portland, Oreg	do	406	8.77	1.33028	5.40	3.37	5861	960639–5/46–EJB	
				MC–35280	12/31/41	None	do	do	do	2,313	49.96	1.33028	30.77	19.19	5861	960639–5/46–EJB	
														22.56			

SHIPMENTS MADE FOR ACCOUNT OF NAVY DEPARTMENT

1880	154338	6/42	S. J. Brune	N–699038	1/ 7/42	None	Moraine, Ohio	Alameda, Calif	Electric refrigerators	9,150	$251.63	$2.05272	$187.82	$63.81	1441	97231–3/45–WMW	
1827	151474	5/42	S. J. Brune	N–876993	3/ 7/42	None	New York, N. Y	San Diego, Calif	Aircraft clocks	389	21.40	3.15101	12.26	9.14	1441	97231–3/45–WMW	
				N–887085	4/ 3/42	None	do	do	do	360	20.84	3.33845	12.02	8.82	1441	97231–3/45–WMW	
				N–709542	2/13/42	None	do	do	do	225	12.38	3.15101	7.09	5.29	1441	97231–3/45–WMW	
				N–911790	4/ 6/42	None	do	Norwood, Ohio	Cabinets, wood	100	4.48	3.12359	3.12	1.36	1441	97231–3/45–WMW	

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				N-911736	4/16/42	None	do	do	do	1,740	82.30	3.12359	54.35	27.95	1441	97231-3/45-WMW	
														54.17				
1359	139127	4/42	S. J. Brune	N-879186	3/12/42	None	Mendota, Ill.	San Francisco, Calif.	Sheet steel ware	4,460	117.74	1.85385	82.71	35.03	1441	97231-3/45-WMW	
	102267	7/42	S. J. Brune	N-76462	5/15/42	None	Brooklyn, N. Y.	Houston, Tex.	Paper forms	122	4.11	2.66393	3.25	.86	1442	97230-3/45-WMW	
				N-76542	5/19/42	None	do	do	Books and medicine	227	6.55	2.66393	5.17	1.38	1442	97230-3/45-WMW	(2)
				N-77105	6/ 1/42	None	do	Kansas City, Kans.	Miscellaneous	5,299	146.71	Various	120.34	26.37	1442	97230-3/45-WMW	
														28.61				
2401	167663	6/42	S. J. Brune	N-710215-42	8/27/41	None	Newport, R. I.	San Pedro, Calif.	Fittings, n. o. i. b. n.	391	10.79	1.96164	7.67	3.12	1442	97230-3/45-WMW	
1287	136064	4/42	S. J. Brune	N-768680-42	3/ 4/42	None	do	San Francisco, Calif.	Shafting steel	700	25.06	3.14539	22.02	3.04	5141	258876-6/45-WMW	
3412	123957	8/42	S. J. Brune	N-77735	6/16/42	None	Brooklyn, N. Y.	Houston, Tex.	Paper forms	683	16.73	1.76962	12.09	4.64	5831	626357-6/44-WJMcN	(2)
1367	3139	7/42	O. F. McClow...	TPS-213087	3/17/42	None	Washington, D. C.	Seattle, Wash.	Miscellaneous	2,635	77.14	Various	49.76	27.38	16590	40346-6/44-OFMcC	
			Coast Guard															
1791	261360	1/43	W. J. McNeil...	N-827839	2/13/42	None	Cleveland, Ohio	San Pedro, Calif.	Rivets	15,971	378.51	1.42270	227.22	151.29	3909	27311-11/46-PCC	
1792	261359	1/43	W. J. McNeil...	N-938463	2/24/42	None	do	Long Beach, Calif.	Nails	11,342	268.81	1.42356	268.81	107.35	3909	27311-11/46-PCC	
4421	145822	9/42	W. J. McNeil...	N-38255	5/ 7/42	None	Brooklyn, N. Y.	Corona, Calif.	Lead lath	9,000	327.60	2.78266	250.44	77.16	3909	27311-11/46-PCC	

SHIPMENTS MADE FOR ACCOUNT OF DEPARTMENT OF THE ARMY

2759	158209	8/42	J. P. Tillman...	WQ-3248092	5/21/42	None	Cincinnati, Ohio	Rock Island, Ill.	Firearms, n. o. i. b. n.	8,958	$105.70	$1.04548	$93.65	$12.05	3469	429039-4/45-MBH	(2)
3586	226560	9/42	J. P. Tillman...	WQ-4970382	5/19/42	None	do	Hegewisch, Ill. (Chicago)	Machine	22,100 as 24,000	102.63		77.21	25.42	3305	416367-4/45-MBH	(2)
2680	139075	8/42	J. P. Tillman...	WQ-5105702	4/ 3/42	None	Dayton, Ohio	Shreveport, La.	Generators jts.	4,346	89.53	1.11622	48.51	41.02	2280	313591-3/45-MBH	
1406	1296	5/42	J. P. Tillman...	WE-319223	5/ 1/42	None	Buffalo, N. Y.	Oakland, Calif.	Rubber hose	11,115	372.35	1.97625	219.66	152.69	5122	Claim 835308	
1364	732643	2/43	M. B. Hale	WE-319223	5/ 1/42	None	New York, N. Y.	New Orleans, La.	Refrigerator box, KD	8,040	164.82	1.71026	137.50	27.32	5122	Claim 835308	
														[1] 178.38			
2269	48914	7/42	J. P. Tillman...	WE-319252	5/42/42	None	do	do	Paper	10,806	173.98	1.33796	144.58	29.40	3548	449852-5/45-MBH	
930	16826	5/42	W. M. Dixon...	DSS-43266	12/24/41	None	Washington, D. C.	Sacramento, Calif.	Miscellaneous	9,833	213.45	Various	132.70	80.75	436	89678-1/45-MBH	
871	491687	4/42	W. M. Dixon...	WQ-4797258	1/31/42	None	Chicago, Ill.	Kansas City, Kans.	Hose clamps	2,477	24.77	.68076	16.86	7.91	8624	807946-6/44-MBH	
				WQ-4796345	2/ 2/42	None	do	do	do	458	4.58	.68076	3.12	1.46	8624	807946-6/44-MBH	
				WQ-4796344	2/ 5/42	None	do	do	do	2,400	24.00	.68076	16.34	7.66	8624	807946-6/44-MBH	
				WQ-4800291	2/25/42	None	do	do	do	725	7.25	.68076	4.94	2.31	8624	807946-6/44-MBH	
				WQ-4795654	1/31/42	None	do	do	Auto parts	730	7.30	.68076	4.97	2.33	8624	807946-6/44-MBH	
				WQ-4799527	12/11/41	None	Milwaukee, Wis.	do	Switches	559	5.87	.77607	4.34	1.53	8624	807946-6/44-MBH	
				WQ-4799475	12/11/41	None	do	do	do	636	6.68	.77607	4.94	1.74	8624	807946-6/44-MBH	
				WQ-4799473	12/13/41	None	do	do	do	799	8.39	.77607	6.20	2.19	8624	807946-6/44-MBH	
				WQ-4800293	1/23/42	None	Detroit, Mich.	do	Tank unit	561	8.47	1.14973	6.45	2.02	8624	807946-6/44-MBH	
				WQ-4797869	1/ 5/42	None	do	do	Paint	937	9.18	.74707	7.00	2.18	8624	807946-6/44-MBH	
				WQ-4796674	1/ 7/42	None	South Lyon, Mich.	do	Steel tubing	4,090	36.40	.45692	18.69	17.71	8624	807946-6/44-MBH	
														49.04			
3120	29469	10/44	J. Harris—Manifest No. 350		9/24/43	None	Buffalo, N. Y.	Higgins, La.				1.44785		129.68	7710	2438060-9/45-MBH	(2)
3121-3122			J. Harris—Manifest No. 372		10/ 8/43	None	do	do				1.44785		50.22	7710	2438060-9/45-MBH	
														179.90			
																Total	$2,117.28

NOTES

*Stated on C-199 as B/L MC-83246.

**Shows Route Order No. MCC (ESP) 1681—However, this is not the Route Order No.

r Error in rates.

[1] Bill 5122 shows actual deduction of $180.01 whereas appendix shows only $178.38.

[2] Shipments moved after May 16, 1942.

[3] Commercial b/l, car manifests—actual routes not known nor furnished. Moved after May 16, 1942.

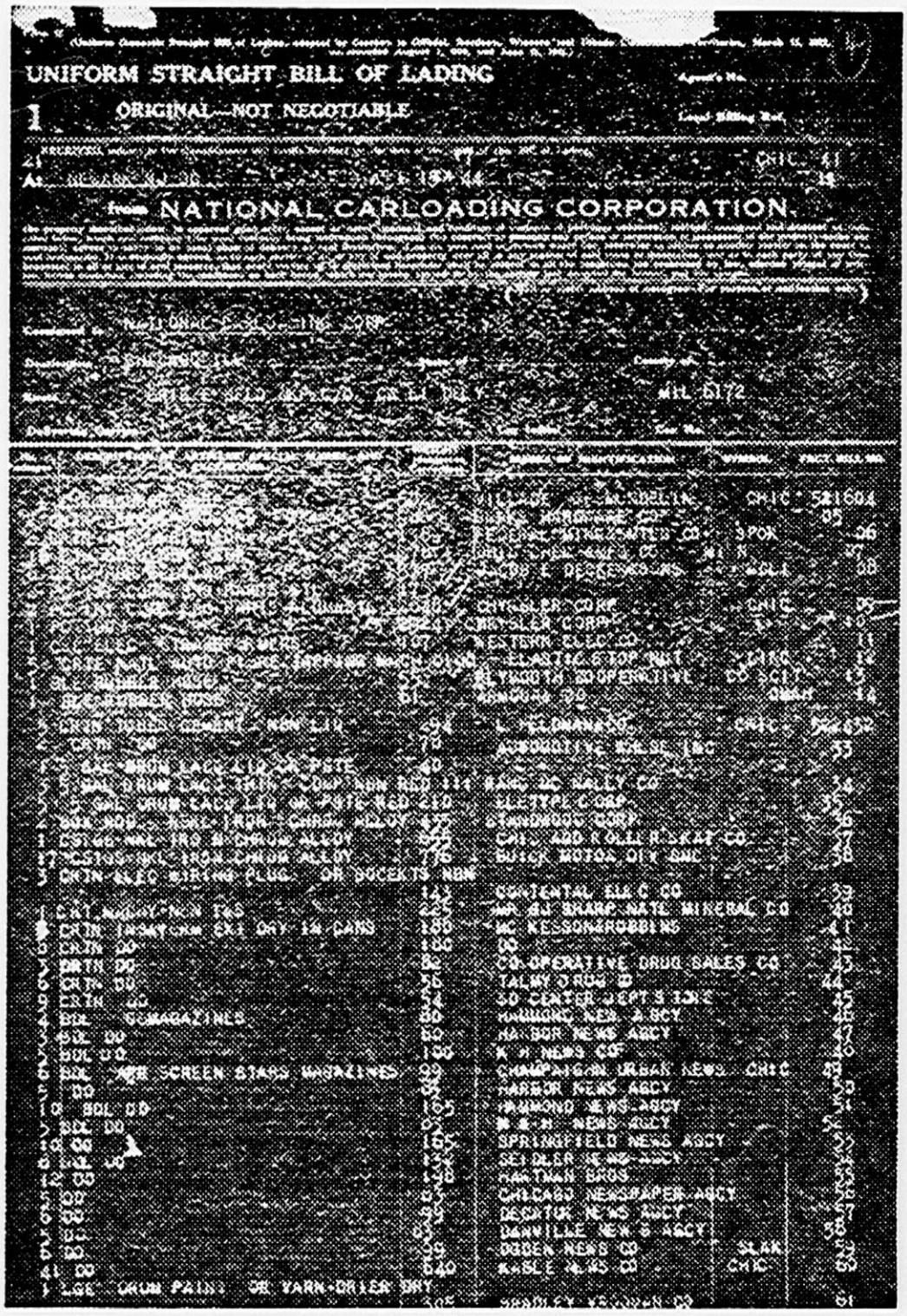
[4] Overpayment.

The following items are cases on which the papers have not yet been assembled:

Deduction bill number	*Voucher number as shown*	*Overpayment bill number*	*Amount claimed*
15677	384105	1451	$33.24
1873	788191	774	699.20
8409	185668	Not shown	32.19
13351	147748	Not shown	9.80
14374	346866	Not shown	22.48
Total			766.91

RECAPITULATION

Total amount claimed in the petition		$5,447.72
Less amount of $60 due to error by plaintiff in showing amount claimed in Appendix to Complaint on bill No. 2280 as $101.02, whereas the Appendix to Reply to Answer shows only $41.02	$60.00	
Amount of undeveloped items	766.91	
Amounts involved on shipments moving on Government bills of lading prior to May 16, 1942	4,312.40	
Amounts on shipments moving on and after May 16, 1942—		
On Government bills of lading	128.51	
On commercial bills of lading	179.90	
		5,447.72



UNIFORM STRAIGHT BILL OF LADING

1 ORIGINAL—NOT NEGOTIABLE

NATIONAL CARLOADING CORPORATION

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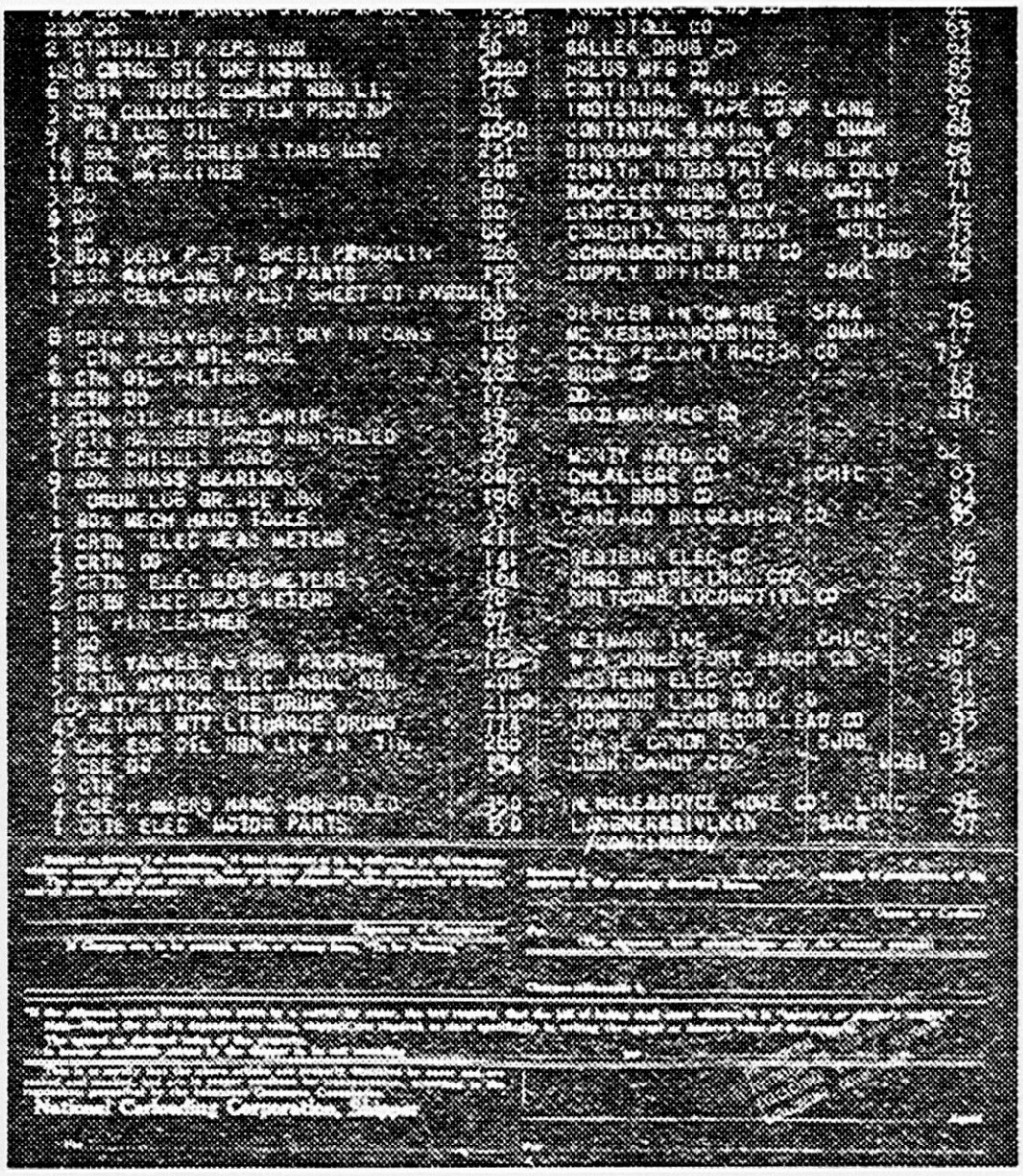

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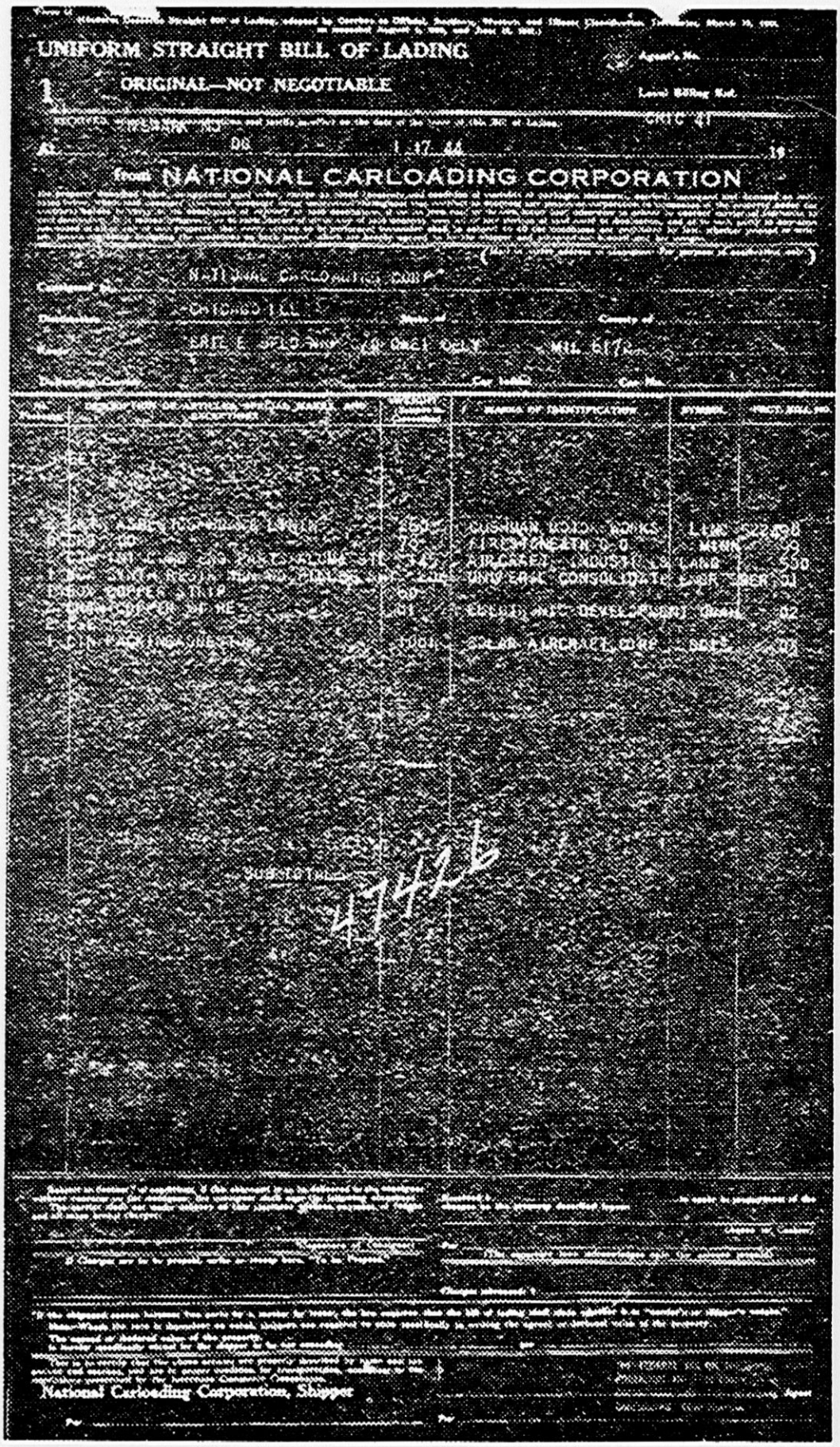

UNIFORM STRAIGHT BILL OF LADING

1 ORIGINAL—NOT NEGOTIABLE

Agent's No.

Carrier's No.

CHIC 41

Dated at 08 1-17-44 19

From NATIONAL CARLOADING CORPORATION

(Mail or street address of consignor—No P. O. Box)

To NATIONAL CARLOADING CORP

Destination CHICAGO ILL State of

Route DATE & SPECIAL INSTRUCTIONS (IF ANY) ONLY MIL 6172

For identification For identification

No. Packages	Description of Articles, Special Marks, and Exceptions	Weight (Subject to Correction)	Class or Rate	Check Column
1	CRATE	4744		
	CONTAINING AIRCRAFT ENGINE PARTS			
	CONSIGNED TO			
	CUSHMAN MOTOR WORKS			
	LINCOLN NEBR			
	SHIPPED ON BEHALF OF			
	AIRCRAFT ENGINEERING CO			
	MINN			
	SHIPPED VIA			
	AIRCRAFT INDUSTRIES INC			
	LANG			
	SHIPPED FROM			
	UNIVERSAL CONSOLIDATED			
	LINCOLN NEBR			
	DEPOT, DOCKS, ETC.			
	SHIPPED FOR			
	EXCEL AIRCRAFT DEVELOPMENT			
	OMAHA			
	FOR RE-CONSIGNMENT			
	SOLAR AIRCRAFT CORP			
	DIEGO			

SUBJECT TO CORRECTION

4744 lb

If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight.

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the consignor to be not exceeding

per

The fibre boxes or containers used in the packing of any of the articles described herein are made in whole or in part of wood grown in the United States.

Shipper's Weight

National Carloading Corporation, Shipper

Per

Agent

Per

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Exhibit E

GENERAL ACCOUNTING OFFICE
CLAIMS DIVISION
Washington

NATIONAL CARLOADING CORP.,
19 Rector St., New York, N. Y.
Your Bill No. 405.
Freight (kind of service preferred).
Maritime Commission (Department or Agency).
(Bureau or Office).
Amount paid $149.96.
By G. S. Allen.
Vou. No. 2447784.
Overpayment, $34.69.
Refer To File No. T–900–DOY., 2447784–6/42 G. F. A.

SIRS: In the audit of your bill described above, an overpayment has been noted as explained below.

Pursuant to Sec. 322 of the Transportation Act, 1940, 54 Stat. 955, a deduction will be made from an amount otherwise due your company unless the amount thus overpaid is refunded within sixty (60) days,—check to be made payable to the United States and mailed direct to this office, referring to given file number.

Respectfully,

G. L. WILLIAMSON,
Chief of Section.

OCTOBER 28, 1943
Exception(s):

B/L, MC 36905, 12/24/41, steel pipe fittings, Philadelphia, Pa., to Richmond, Calif., pd. $4.40, sh. be $3.57, diff. $0.83. 188 lbs. @ $1.90287 net land-grant rail rate.

B/L, MC 83246, 12/10/41, shafts, Franklin, Pa., to Richmond, Calif., pd. $22.36, sh. be $14.94, diff. $7.72. 652 lbs. @ $2.29203 net land-grant rail rate.

NATIONAL CARLOADING CORP.

B/L, MC 90866, 12/17/42, iron floor plate, Cleveland, Ohio, to Richmond, Calif., pd. $5.57, sh. be $4.23, diff. $1.34. 265 lbs. @ $1.59492 net land-grant rail rate.

B/L, MC 21647, 12/20/41, elec. switches, Brooklyn, N. Y., to Richmond, Calif., pd. $23.64, sh. be $18.19, diff. $5.45. 788 lbs. @ $2.30782 net land-grant rail rate.

B/L, see below. See below, iron valves, Pittsburgh, Pa., to Richmond, Calif., pd. $57.95, sh. be $38.30, diff. $19.65. Net land-grant rail rate, $1.35857.

Date	*B/L*	*Overpayment*
12/11/41	MC 88712	$2.19
1/20/42	88729	3.25
1/20/42	25552	6.41
12/30/41	35269	7.80

These shipments are for military or naval use.

Exhibit G

Domestic and Foreign Freight Forwarders
Export—Consolidated Cars—Import

NATIONAL CARLOADING CORPORATION

19 RECTOR STREET, NEW YORK, N. Y.

The CHIEF OF TRANSPORTATION SERVICE,
Services of Supply,
War Department, Washington, D. C.

Re: Freight forwarder agreement

DEAR SIR: 1. The undersigned hereby agrees to accept all shipments tendered by the War Department, in accordance with the terms of this agreement and subject to the qualifications specified in Exhibit A, attached hereto and made a part hereof, it being expressly understood and agreed that nothing in said Exhibit shall in any way alter any other terms of this agreement. The Statement of qualifications submitted with this agreement is hereby certified as true and correct as of the date of this agreement, and the undersigned agrees to notify the War Department promptly of any change in said statement.

2. Undersigned further agrees, under authority of Section 22 of the Interstate Commerce Act, as amended:

a. To assess charges on War Department shipments not to exceed those made to any other shipper or receiver for an identical shipment between the same points.

b. To move shipments on schedule and not to hold shipments over to make up forwarder's tonnage under any circumstances within forwarder's control.

c. That the maximum rates charged shall not exceed the lowest standard less-carload, all-rail rates or charges and that the total charge for a shipment will not be greater than the charge for a minimum carload of the same freight at the standard carload all-rail rate between the same origin and destination.

d. That all shipments shall move from initial point of origin to final destination on through Government bill of lading or collect commercial bill of lading to be converted to a Government bill of lading at destination.

e. To set up adequate facilities for tracing shipments and upon request to hold, reconsign, divert or reroute in transit any shipment at the first point where required change in routing can be accomplished, subject to tariff provisions.

f. To maintain absolute secrecy concerning the nature and movement of all shipments tendered to forwarder.

g. To accept the deduction of the value of property lost or damaged and the amount of unearned freight charges thereon, and the deduction of over-payments, from current unpaid freight bills.

h. To provide, when requested, cargo insurance in an amount satisfactory to the Chief of Transportation Service, Services of Supply, of the War Department.

i. To acknowledge full common carrier liability for all shipments, from point of receipt to point of final destination and to be considered both the receiving and delivering carrier.

3. It is understood and agreed that when the transportation officer administratively determines, prior to shipment, that freight forwarder service is required, land-grant rates will not be applicable to the transportation so employed provided a

certificate in substantially the following language has been inserted on or attached to the bill of lading (MS. Comp. Gen., B–25583, May 4, 1942 and May 23, 1942):

> ADMINISTRATIVELY DETERMINED THAT THIS FREIGHT FORWARDER SERVICE IS REQUIRED TO MEET THE NEEDS OF THE GOVERNMENT AND THAT EQUIVALENT SERVICE BY OTHER MEANS IS NOT AVAILABLE AT LOWER COST.
>
> .....
> (Signature and rank of certifying officer)

4. This agreement shall be effective from the date of acceptance by the Government until terminated by either party giving thirty (30) days' written notice to the other party.

Respectfully submitted.

NATIONAL CARLOADING CORPORATION,
By E. M. Dillhoefer,
E. M. DILLHOEFER, *President.*

Accepted for the Chief of Transportation Service, Services of Supply.

By: W. J. Williamson,
W. J. WILLIAMSON,
Colonel, T. C.,
Title: *Chief Traffic Control Division.*

Date: September 14, 1942.

Exhibit A

1. Forwarder is a freight forwarder as defined in Part IV of the Interstate Commerce Act, and will apply for a permit under said Part IV, and forwarder maintains a nation-wide freight forwarder service and holds itself out to the general public to provide freight forwarder service in interstate commerce in the transportation of commodities generally. There are certain excepted articles excluded from service, such as commodities in bulk, fertilizer, etc.

2. Freight forwarder is a corporation organized on October 22, 1931, under the laws of the State of Delaware. The names and post office addresses of the principle officers of the corporation are as follows:

E. M. Dillhoefer, President, 19 Rector St., New York City.
L. C. Kerner, Vice President, 19 Rector St., New York City.
T. R. Hudd, Vice President, 1018 So. Wabash, Chicago, Ill.
H. L. Bockstahler, Treasurer, 19 Rector St., New York City.
P. J. Coughlin, Secretary, 19 Rector St., New York City.

3. The majority of the capital stock of forwarder is owned by Standard Carloading Corporation (an Ohio corporation). Standard Carloading Corporation owns 98.6 percent of the total issued and outstanding shares of forwarder. The balance of the shares are owned by private individuals. The total issued and outstanding shares of the capital stock of Standard Carloading Corporation is owned in three parts equally by the Chesapeake and Ohio Railway Company, the Erie Railroad Company, and the Pere Marquette Railway Company.

4. Forwarder provides freight forwarder service via the facilities of the railroads, motor carriers, water carriers, and by combinations of such carriers. Forwarder maintains freight terminals and offices in 90 cities. Assembling and distribution of freight from said freight terminals is provided largely by motor carriers. Operations between freight terminals is provided via the facilities of rail carriers, motor carriers, and water carriers, and by combinations thereof.

5. Forwarder carries cargo insurance (as evidenced by attached copy of underwriters' certification thereof) in the following amounts: Blanket insurance, $500,000.00.

6. Forwarder's post office address to which all communications may be sent is—National Carloading Corporation, 19 Rector Street, New York, New York.

Supplemental Freight Forwarder Agreement

Agreement between the Chief of Transportation Services (now designated the Chief of Transportation), Services of Supply, War Department, and National Carloading Corporation,

executed September 14, 1942, is hereby modified by striking out and eliminating therefrom paragraph three (3), thereof, as it appears therein.

It is expressly understood and agreed that, except as modified herein, said agreement aforesaid executed September 14, 1942, between the parties hereto shall be and continue in full force and effect until terminated as provided therein.

Signed by the parties hereto on the dates as shown below:

NATIONAL CARLOADING CORPORATION,
By E. M. DILLHOEFER, *President.*

Date: February 18, 1943.

Accepted for the Chief of Transportation, Services of Supply, War Department.

By JOHN O. GOTTLIEB,
Lt. Col., T. C.,
For W. J. WILLIAMSON,
Colonel, T. C.,
Chief, Traffic Control Division.

Date: February 24, 1943.

SUPPLEMENTAL FREIGHT FORWARDER AGREEMENT

Agreement between the Chief of Transportation Services (now designated the Chief of Transportation), Services of Supply (now designated Army Service Forces), War Department, and National Carloading Corporation, executed September 14, 1942, and heretofore modified February 24, 1943, by the elimination therefrom of the original paragraph three (3), thereof, is hereby further modified by the insertion therein of a new paragraph three (3), reading as follows:

> 3. The undersigned further agrees, as to shipments originating on, or subsequent to March 1, 1943, when such shipments are consolidated into carloads and tendered to railroads in accordance with tariff provisions applicable to such consolidated carloads, and such consolidated carloads consist of, or contain individual shipments of War Department freight accepted for trans-

portation under Government bills of lading, or under Commercial bills of lading to be converted to Government bills of lading, which freight is of such character and moves between such points as to be entitled to land-grant deductions when shipped directly over the railroads, to tender promptly to the railroads and to the United States General Accounting Office, Claims Division, Washington, D. C., copies of manifests showing the consist of individual less-than-carload shipments of Government freight, including weights, origins and destinations, railroad waybill, and Government bills of lading references, and such other data as may be required by either the railroads or the United States General Accounting Office, for the purpose of enabling the United States General Accounting Office to collect from the railroads the applicable proportionate, land-grant deductions for the movement via railroad.

Signed by the parties hereto on the dates as shown below:

NATIONAL CARLOADING CORPORATION,
By E. M. Dillhoefer,
E. M. DILLHOEFER, *Pres.*

Date: 6/17/43.

Accepted for the Chief of Transportation, Army Service Forces, War Department.

By W. J. Williamson,
W. J. WILLIAMSON,
Colonel, T. C.
Chief, Traffic Control Division.

Date: 24th June 1943.

Exhibit J

HISTORY OF LAND-GRANT PROVISIONS FOR REDUCED RATE ON FREE TRANSPORTATION UP TO PASSAGE OF TRANSPORTATION ACT, 1940

The Federal land-grant acts, with some exceptions, contained provisions for certain rate concessions to the Federal Government in connection with the transportation of its mail, troops,

and property over the aided railroads. These provisions are subject to no limitation as to time and have not been affected by changes in ownership of the railroads. Consequently, they are still effective. They are also applicable to railroads which did not receive land grants, where they operate under trackage agreements over aided portions of land-grant railroads. However, concessions may be required only in connection with transportation over such portions of a railroad's lines as were aided by land grants conditioned upon such concessions, which portions are hereinafter collectively called reduced-rate lines.

Mail: By the act of July 7, 1838 (5 Stat. 271, 283), Congress had made all railroads "post routes," and the land-grant acts, with a few exceptions, contained a provision to the effect that the aided railroads should transport the United States mail at such rates as Congress might fix. The act of July 1, 1862 (12 Stat. 489), granting lands to the original Pacific railroads, merely required that the mail be transported at reasonable rates, not in excess of those paid by private parties for the same class of service.

By the act of June 8, 1872 (17 Stat. 283, 309), Congress provided that all railroads federally aided by grants of lands or rights-of-way, or in other manner, should carry the mail at such rates as Congress might prescribe and that, until rates were so prescribed, the Postmaster General might fix the compensation. By the act of July 12, 1876 (19 Stat. 78, 82), Congress prescribed the compensation of all railroads for transportation of the mail and provided that lines aided in whole or in part by Federal land grants, requiring transportation of the mail over their lines at such charges as Congress might impose, should receive only 80 percent of the compensation fixed for railroads in general. By the act of July 28, 1916 (39 Stat. 412, 425), Congress empowered the Interstate Commerce Commission to fix the railroads' compensation for transportation of the mail, but provided that the land-grant lines should receive only 80 percent of the rates found reasonable for such transportation.

Troops and propery: Practically all of the land-grant acts contained some provisions relating to the transportation of Federal troops and property and the charges therefor. Some

of the acts granting land to the Pacific railroads, as that of July 1, 1862 (12 Stat. 489), merely required that such charges be reasonable and not in excess of those paid by private parties. The railroads which received land grants under acts containing these provisions are hereinafter called full-charge lines. Most of the grants, however, contained provisions which enabled the Government to secure such transportation either at reduced rates or without charge, and these are the ones now to be considered.

A majority of the land-grant acts, including the act of September 20, 1850 (9 Stat. 466), granting lands in aid of the Illinois Central, all of the other acts prior to July 1, 1862, and some thereafter, provided in substance that the aided railroads should be public highways for the use of the Federal Government, free from any toll or other charge for the transportation of its troops or property. The railroads receiving grants subject to this provision are hereinafter called free-toll lines.

The act of July 27, 1866 (14 Stat. 292, 297); granting lands in aid of the Atlantic & Pacific, and a few other acts provided in substance that the railroads so aided should furnish such service at such charges as Congress might impose. These railroads are hereinafter called congressional-rate lines.

The act of July 25, 1866 (14 Stat. 239), which granted lands in aid of the California & Oregon, and a few other acts provided in substance that Federal troops and property should be transported over the aided railroads without any charge to the Government. The railroads subject to such provisions are hereinafter called free-grant lines.

Pursuant to the act of January 31, 1862 (12 Stat. 334), which placed the transportation of troops and military property under the control of the Secretary of War, the War Department allowed the free-toll railroads 2 cents per mile, less 33⅓ percent, for transportation of troops, and reasonable rates, less 33⅓ percent, for transportation of Government property, except as to the Hannibal & St. Joseph and the Pacific Railroad, which under the joint resolution of March 6, 1862 (12 Stat. 614), were not subjected to these reduced rates because of destruction of portions of their property by southern sympathizers. In 1867

the War Department fixed the compensation for the transportation of both troops and property over all free-toll railroads at 66⅔ percent of that paid by the public.

In the Army Appropriation Act of 1874 (18 Stat. 72, 74), Congress provided that no payment should be made for the transportation of troops or property over free-toll railroads, or any other land-grant railroads, where the land-grant act contained any condition whatsoever relating to the transportation of Federal troops and property. The Army Appropriation Act of 1875 (18 Stat. 452, 453), contained the same provision, except that it did not apply to railroads which received land under grants conditioned upon transportation of Federal troops and property at the same rates as those charged the general public. By the Army Appropriation Act of 1874 the free-toll railroads were permitted to institute suit against the Government in order that the free-toll provision of the acts might be interpreted by the courts, and in *Lake Superior & M. R. Co.* v. *United States* (93 U. S. 442), decided January 15, 1877, this provision was construed as authorizing the free use of the railroads' tracks for such transportation, the necessary locomotives and cars to be furnished by the Government and operated at its expense. Under the decision of the Court of Claims in *Atchison, T. & S. F. R. Co.* v. *United States* (12 Ct. Cls. 295), the free-toll railroads recovered 66⅔ percent of the transportation charges withheld by the War Department pursuant to the Army Appropriation Act of 1874.

By the act of July 16, 1892 (27 Stat. 174, 180), Congress provided that rates over the free-toll and congressional-rate railroads should be such as the Secretary of War might deem just, but not in excess of 50 percent of those charged the general public. By subsequent legislation this basis has been continued.

As officials charged with the procurement of transportation for the Government are required to secure such transportation at the lowest available rates, the free-grant lines were used, singly or in combination with other lines, wherever such use enabled lower charges. Very circuitous routing was often employed in order to utilize the free-grant lines. The large vol-

ume of this free transportation placed a heavy burden upon some of the lines, and in order to relieve the situation, Congress by a series of acts provided that the free-grant railroads should receive the same compensation as the free-toll and congressional-rate railroads. As a consequence, all land-grant railroads which transport Federal troops and property at less than the rates charged the general public by reason of reduced-rate provisions of the grant now do so on the 50-percent basis.

U. S. GOVERNMENT PRINTING OFFICE: 1959

APPELLANT'S REPLY BRIEF

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED DEC 9 1953

Joseph W. Stewart
CLERK

No. 11,898

NATIONAL CARLOADING CORPORATION,
Appellant.

v.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from an Order of the United States District Court for the District of Columbia

ROBERT E. QUIRK,
Investment Building,
Washington, D. C.:
Attorney for Appellant.

December 9, 1953.

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Appellant,

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UNITED STATES OF AMERICA,
Appellee.

On Appeal from an Order of the United States District Court for the District of Columbia

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APPELLANT'S REPLY BRIEF

This Reply Brief is addressed to three of the Government's contentions as set forth in its Brief:—

1. That Appellant contracted for allowance of land-grant deduction by submitting a public voucher on which it certified that "the rates charged are not in excess of the lowest net rates available for the Government, based on tariffs effective at the date of service." (JA 32)

2. That the Government is entitled to ship via freight-forwarder at land-grant rates even though the forwarder must pay full tariff rates to the underlying railroads.

3. That Appellant was a "user" of land-grant railroads for transportation of Government property, within the meaning of *Lake Superior & Miss. R. Co.* v. *United States,* 93 U.S. 442, and *Chicago, St. P., M. & Omaha R. Co.* v. *United States,* 217 U.S. 180.

I

Appellant Did Not Contract to Carry the Government's Property at Land-Grant Rates by Virtue of Its Submission of a Public Voucher in Standard Form.

The Government contends (Brief, p. 25) that Appellant contracted to carry the Government's property at land-grant rates (1) by issuing a Government bill of lading which provided in Condition 1 (JA 30) that payment would be made upon the accomplished bill of lading "attached to freight voucher prepared on the authorized Government form * * *"; and (2) by submitting the specified voucher bearing the usual printed certification that "the rates charged are not in excess of the lowest net rates available for the Government, based on tariffs effective at the date of service" (JA 32).

The Government cites *Alcoa Steamship Co.* v. *United States,* 338 U.S. 421, 429, for the proposition that the terms of the voucher are a part of the bill of lading contract. As shown by our main Brief (pp. 15-16), *Alcoa* held the basic question to be "whether the Government's draftmanship succeeds in giving unequivocal notice" of the Government's stipulations (338 U.S. at p. 429). The Court ruled that a carrier had unequivocal notice that the Government became liable for freight only upon delivery of a shipment, in view of a recitation in the voucher that payment would be made "only for the quantity of stores delivered at destination * * *" (p. 428).

The certification on the face of the voucher here involved

(JA 32) gave no notice, unequivocal or otherwise, that the Government claimed land-grant rates on property transported in forwarder service. The certification stated that the rates charged did not exceed "the lowest net rates available for the Government, *based on tariffs effective at the date of service.*" This can mean no more than that the Government would pay the lowest applicable *tariff* rate and no more. It is in no sense a contract for land-grant rates, as clearly appears from Condition 3 of the Government bill of lading (JA 30) that shipments thereunder "shall take no higher rates than would be charged had the shipment been made upon the uniform straight bill of lading * * *." If the voucher certification had the meaning ascribed to it by the Government, every shipment made by the Government over *any* railroad would move at land-grant rates.

The certification that the carriers' charges are not in excess of the lowest net rates "available" to the Government leaves open the question whether land-grant rates are available or not. They are "available" if the law provides for them and not otherwise. The Government begs the issue in assuming their availability.

II

Appellant Was Liable for Payment of Full Commercial Rates to the Underlying Rail Carriers and Was Consequently Entitled to Recover Full Commercial Rates from the Government.

We described this case in our main Brief (p. 12) as one in which the Government seeks something for nothing. The Government supports our characterization by its contention (Brief, p. 19) that the existence or non-existence of the right of Appellant to receive the land-grant reduction from the underlying railroads used by it, is immaterial. The Government thus holds itself entitled to ship via freight

forwarder at 50 percent of commercial railroad rates even though the forwarder must pay full commercial rates to the rail carriers.[1]

No statute and no provision of any contract between the parties gave intelligible forewarning of any such result, which we deem iniquitous to the point of inviting a judicial homily on the rudiments of commercial morality such as the Court of Claims addressed to the Government in *Belcher* v. *United States,* 94 Ct. Cl. 137.

That case was a suit against the United States to recover the price of coal sold for use in a post office. After the sale and before payment, the seller borrowed money from a bank on a promissory note, which the postmaster who ordered the coal executed as co-maker by way of accommodation. The General Accounting Office disallowed the seller's voucher for the price of the coal, stating in a letter to the claimant (94 Ct. Cl. at p. 139):

> "Inasmuch as you have been paid in full by the First National Bank of Central City, Kentucky, upon the basis of a promissory note made by George L. Wallace and T. N. Belcher on March 3, 1938, in the amount of $200.65, the claim against the United States as presented is a fictitious or untrue one . . ."

In awarding judgment to the plaintiff, the court said (p. 141):

> "We confess that we are also just a little surprised at the contents of the letter. It has neither pattern nor syllogism, but it certainly has point.
>
> "This method of settling government obligations is

---

[1] In our main Brief, p. 13, we pointed out that a freight forwarder is a practitioner of a common calling and must accept freight for shipment as tendered. Cf. *Terminal Taxicab Co.* v. *Kutz,* 241 U.S. 252, 255. While we think it unnecessary to develop the point here, it is perfectly clear that any law which required Appellant to accept property for transportation at a loss would be confiscatory and unconstitutional. *Brooks-Scanlon Co.* v. *Railroad Commission,* 251 U.S. 396.

> so novel that, if reduced to practice, it should be patentable. It would solve many national problems. The holder of a government obligation at one time or another is usually in need of money. He borrowed money at the bank, and, ergo, the Government's obligation is settled.
>
> "If this obligation were a large one it would be bad enough. But when it is for an amount so small that the value of the time and expense of litigation will eat up its substance, it is indefensible. That a just government, or any responsible official thereof, would pursue a course that would make such action necessary is almost incredible. It is one of those strange things that sometimes appear in the processes of free government."

We think it equally incredible that "a just government, or any responsible official thereof" should seek to pervert the land-grant statutes by using them to obtain for the Government at half-price a service for which the supplier—who received no land grants or equivalent benefits—must himself pay full price.

As shown at page 30 of our main Brief, there can be no doubt that the forwarder was liable to the underlying railroads for the payment of full commercial rates. This has not been doubted since *Lehigh Valley R. Co.* v. *United States*, 243 U.S. 444, in which Mr. Justice Holmes said (p. 445):

> "As toward the railroad, George W. Sheldon & Company [a forwarder] is consignor and consignee and although it may be in no case the owner, *that does not concern the appellant.* Upon the admitted facts there can be no doubt, and it is not denied that it is to all legal intents the shipper of the goods. [Citations] If the shipper were the owner, an allowance to him of a percentage upon the freight as an inducement to ship by that line, however honest and however justifiable on commercial principles, would be contrary to the Act to Regulate Commerce as it now stands. [Citations] But the above cases show that *the carrier cannot in-*

> *quire whether the shipper is the owner,* and therefore the statute expresses a necessary policy when it forbids in universal terms refunding in any manner any portion of the rates specified in the published tariffs, or extending to 'any shipper' any privilege not so specified. Of course it does not matter whether the allowance takes the form of a deduction or a cross payment. Any payment made by a carrier to a shipper in consideration of his shipping goods over the carrier's line comes within the prohibiting words." (Italics added).

The present case is not affected by this Court's decision in *Universal Carloadng Corp.* v. *Railroad Retirement Board,* 84 App. D. C. 188, 172 F. 2d 22, which the Government cites (Brief, p. 20) as holding that a freight forwarder performs "railroad-like functions", particularly where, as in the case of appellant, it is owned by railroads. As appears from the footnote at page 19 of our main Brief, the question in *Universal* was whether a forwarder was an employer within the meaning of the Railroad Unemployment Insurance Act, 45 U.S.C. 351-367, which covered—

> "* * * any company which is directly or indirectly owned or controlled by one or more such carriers * * * and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of * * * property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *."

The Court held that the forwarder was subject to the control of a railroad company and that it performed such "railroad-like" functions as the quoted portion of the statute described. The decision has no bearing whatever upon the question presently under review. It held merely that the employees of a particular type of employer were entitled to

the benefits of particular legislation governing the employer-employee relationship. The case did not intimate that a forwarder is engaged in the railroad business; much less did it suggest that under a statute giving the Government concessions in return for land grants to railroads, the Government could secure the same concessions from other enterprises to which no lands or other public benefactions were granted.

The *Lehigh Valley* case is conclusive authority that the services of a forwarder are *not* railroad services in the sense that a railroad may pay a forwarder for performing them in its behalf. In discussing the question whether the forwarder was entitled to an allowance from the railroad for the services the forwarder performed, Mr. Justice Holmes said (243 U. S., at p. 446):

> "The services rendered by George W. Sheldon & Company although in a practical sense 'connected with such transportation,' *were not connected with it as a necessary part of the carriage*,—were not 'transportation service,' in the language of Union P. R. Co. v. Updike Grain Co., 222 U. S. 215 * * * and, in our opinion, were not such services as were contemplated in the Act of June 29, 1906, * * * 34 Stat. at L. 589 * * * amending § 15 of the original act. On the other hand, the allowance for them falls within the plain meaning of § 2 of the Act of 1906, to which we referred above." (Italics added).

Although the Government contends that forwarders must serve it at land-grant rates while paying full tariff rates to the railroads, it seeks to lessen the invidium of its argument by suggesting (a) that "appellant could have secured the land-grant reductions from the railroads it used for the transportation of government property" (Brief, p. 19); and (b) that the forwarder suffers no injustice in paying tariff rates while collecting land-grant rates because "the freight

forwarder pays the railroad a lower rate than net rate to the Government'' (Brief, p. 21).

The contention that the freight forwarder is entitled to a land-grant deduction or any other form of rebate from the railroads is unsupported by any citation of authority in the Government's Brief, and is negated specifically by *Freight Forwarding Investigation*, 229 I.C.C. 201, 218, 237, 263, 204, as well as the *Lehigh Valley* decision and *Chicago, M. St. P. & P. R. Co.* v. *Acme Fast Freight*, 336 U. S. 465, 480, discussed at page 30 of our main Brief.

The claim that the forwarder suffers no ''injustice'' in collecting land-grant rates while paying commercial rates finds no support in the record and is based on nothing more substantial than officious speculation. It is true that the forwarder ships by railroad at the carload rate, and charges his client the somewhat higher less-than-carload rate, earning his profit on the spread. There is no basis, however, for the Government's assumption that there would be any spread in the forwarder's favor after his less-than-carload charges had been cut in half. The assumption that any seller can be paid off at 50% of his usual charges without ''injustice'' is cavalier to the point of impertinence.

III

Appellant Was Not a "User" of Land-Grant Railroads Within the Meaning of Any Land-Grant Acts

Appellant cites *Chicago, M., St. P. & P. R. Co.* v. *Acme Fast Freight*, 336 U. S. 465, 480, for the proposition that ''shipments carried by a railroad in freight forwarder service should be treated by the railroad as if they had been tendered to the railroad by the owner of the goods.'' This is a plain misstatement of the case, which held explicitly that ''the carrier is not concerned with questions of ownership, but must treat the forwarder as a shipper.'' (336 U. S., at p. 481).

The italicized quotation at p. 14 of the Government's brief from *Lake Superior & Miss. R. Co.* v. *U. S.*, 93 U. S. 442, 449, is quoted out of context and has nothing to do with the only point decided in the case—i.e., that under the "free toll" type of land-grant statute, the Government is entitled only to the use of the roadbed as a public highway and is not entitled to the free use of rolling stock or locomotive equipment, or to free transportation service. That railroads are sometimes actually operated by others than their owners is immaterial here. A freight forwarder is in no sense the operator of a railroad. It deals with the railroad precisely as does any other shipper of merchandise in carload lots, and not otherwise—a fact that also renders immaterial the decision in *Chicago, St. P., M. & Omaha R. Co.* v. *U. S.*, 217 U. S. 180, which extended the land-grant obligations of a land-grant railroad company to a corporation which actually operated the railroad as a lessee of its trackage. The lessor-lessee relationship clearly created a privity of estate between the owner of the roadbed and the lessee-operator which cannot be found in the relationship between a common carrier and its shippers.

Conclusion

The judgment of the District Court should be reversed in accordance with the prayer set forth at page 33 of our main Brief.

Respectfully submitted,

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